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1 have a meeting and, I believe, it was the Secret  
2 Service would like to have a discussion about the  
3 details regarding the coin and the potential  
4 transfer that we had discussed earlier.

5 And I recall saying, communicating,  
6 whether by e-mail or phone, "happy to have it in my  
7 office." And I recall this as an e-mail, I  
8 believe, "happy to have the coins go to the Secret  
9 Service offices."

10 Q. Okay. Let's move to the September -  
11 - there were these e-mails and this one phone call  
12 that you described and then a second phone call  
13 that you think was mostly about logistics?

14 A. Right.

15 Q. It wasn't substantive about an  
16 agreement of any sort?

17 A. I don't recall.

18 Q. And - -

19 A. I describe it as two - - I can't  
20 swear there wasn't a third - - calls in terms of  
21 lining up the logistics. But that is what I  
22 recall.

23 Q. Let's move to the September 15th  
24 meeting in Brooklyn.

25 A. Yes.

1 would be submitting - -

2 (Phone ringing.)

3 Q. I'm sorry. Go ahead.

4 A. I remember clearly discussing that we  
5 would be submitting a letter, making clear the  
6 Langbords are reserving all their rights to the  
7 coins and are not in any way waiving any of their  
8 legal rights or claims related to the coins.

9 Q. Yes?

10 A. I remember one of the Secret Service  
11 agents asking whether we would be prepared to waive  
12 venue, which I understood to be meaning that if  
13 they were to bring a forfeiture action against the  
14 coins, an agreement that the venue could rest in  
15 New York, because I understood why there may be  
16 concern that there may not be such action for venue  
17 against the coins in New York.

18 And that's an issue that had - - that  
19 had occurred - - well, let me just say, I wasn't  
20 surprised - - well, let me just say this  
21 differently - - that I was prepared to say that we  
22 would be prepared to waive venue, so if there was  
23 an ultimate - - if there was a In Rem action  
24 against the coins, it would be in New York.

25 Q. Anything else you recall?

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1 Q. How did that come about?

2 A. As I said, I believe there was a  
3 discussion about it, that there would be such a  
4 meeting, and I recall an e-mail about such a  
5 meeting.

6 And it was - - then I said I would be  
7 perfectly willing to go to the Secret Service  
8 offices, if that was preferred.

9 Q. And what occurred?

10 A. I was there; Steven Sparling, of my  
11 office, was there. I recall that Greg Weinman and  
12 Dan Shaver were there. And I recall two Secret  
13 Service agents were there.

14 Q. Okay.

15 A. I recall a very brief discussion  
16 about the coins, very brief.

17 I recall identifying the person they  
18 would be meeting as Roy Langbord.

19 I recall identifying the bank where  
20 the coins were at, in Philadelphia.

21 It may have been that I didn't have  
22 the exact address there, but provided additional  
23 details later. But I recall identifying the name  
24 of the bank that we were talking about.

25 I recall clearly discussing that we

1 A. I recall discussing the actual  
2 logistics, generally.

3 And I do recall that the Secret  
4 Service wanted to know who would be there and I  
5 recall telling them that I would certainly be there  
6 and expected Roy Langbord would be there.

7 And those are the salient terms and  
8 importance of the meeting that I recall.

9 Q. Are you aware of any notes of that  
10 meeting?

11 A. I'm aware of Secret Service reports  
12 that were made of that meeting, that, I assume - -  
13 just based on prior knowledge - - were made from  
14 notes.

15 Q. Are you aware of any other notes?

16 A. I'm not.

17 Q. Are you aware of any memoranda to  
18 file concerning what happened?

19 A. I'm not.

20 Q. Is that the first time you identified  
21 the Langbords?

22 A. My recollection is that it was,  
23 identified to the government.

24 Q. Do you recall saying that - -  
25 describing the Langbords as good citizens, in

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1 quotes, "good citizens who wanted to do the right  
2 thing?"

3 A. I believe that in describing them I  
4 said more than that. I don't recall using those  
5 specific words.

6 Q. How else did you describe them?

7 A. I remember saying - - I believe that  
8 I said that Roy Langbord is an admitted - - is an  
9 attorney, although not a practicing attorney; and I  
10 believe I - - I characterized - - I referenced  
11 their voluntary alerting the Mint to that.

12 In other words, I made clear that I  
13 don't believe that anybody was aware that the  
14 Langbords had these coins prior to them voluntarily  
15 alerting the Mint to the coins. I think I had made  
16 reference, although in words or substance, that's  
17 not how everyone would have responded to  
18 discovering these coins.

19 Q. Okay. So, in substance, the idea  
20 they were good citizens and did the right thing,  
21 you don't disagree with that?

22 A. No, I don't.

23 And I think there's a little more  
24 that I've said, but I don't dispute those may have  
25 been the words I used, the notion that I didn't

1 based on your communications with the  
2 government, if based on those communications  
3 you formed an understanding as to why the  
4 Secret Service was involved, you can answer.

5 But if your understanding as to why  
6 the Secret Service was involved deals with  
7 your legal thinking on the case or the  
8 possible case, then you shouldn't answer the  
9 question.

10 BT MR. SWEET: (Continued)

11 Q. The answer is fine. You have started  
12 off fine.

13 A. Okay.

14 Q. Clearly to you?

15 A. Clear to me in my conversations with  
16 the Mint was that they wanted to be the government  
17 agency that would deal with us related to the  
18 coins, the ultimate issues about whether or not we  
19 can reach an agreement related to the coins, as had  
20 been the case in the Fenton litigation.

21 MR. TIRSCHWELL: The question - -

22 THE WITNESS: I understood the  
23 question.

24 I don't recall specifically what was  
25 said prior to that meeting, other than that

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1 conceal them, et cetera.

2 Q. What was your understanding of why  
3 the Mint was involved, at all?

4 A. (No response.)

5 MR. SWEET: I'm sorry.

6 Strike that.

7 BY MR. SWEET: (Continued)

8 Q. What was your understanding of why  
9 the Secret Service was involved, at all, in this  
10 matter?

11 MR. TIRSCHWELL: Again, I'm going to  
12 instruct him to answer only insofar as his  
13 understanding is based on communications with  
14 the government.

15 To the extent he has an understanding  
16 based on his legal work, I'm going to  
17 instruct him not to answer.

18 THE WITNESS: It was clear to me, and  
19 it had been expressed by the lawyers - - I'm  
20 sorry - -

21 MR. TIRSCHWELL: Well.

22 THE WITNESS: What was your - - I'm  
23 sorry.

24 Remind me of what you said?

25 MR. TIRSCHWELL: If you can answer

1 based on their internal discussions it would  
2 have to be the - - the Mint who would be  
3 involved in taking the coins, although I  
4 understood that the role of the Mint would  
5 be, as I understand it to be, the party we  
6 would be talking to the coins about.

7 I do recall being expressed at some  
8 point that if the coins were counterfeit,  
9 then that would be something that the Secret  
10 Service would be involved in investigating.

11 I think that's what I summarize being  
12 told about the role of the Secret Service, up  
13 to that point.

14 There were subsequent discussions,  
15 following the transfer, about the role of the  
16 Secret Service.

17 BY MR. SWEET: (Continued)

18 Q. At this meeting, leading up to this  
19 meeting, nobody from the Mint said to you that if  
20 the Double Eagles turned out to be authentic and no  
21 agreement were reached, they would be returned to  
22 the Langbords, did they?

23 A. That was not - - that statement was  
24 not made.

25 Q. Okay. And no statement similar, no

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<p>1 statement conveying that, that message, was 2 conveyed to you, was it? 3 A. I want to be careful about what you 4 mean by "similar" and what I mean by "similar." 5 The entire basis of our conversation 6 was that if we did not reach an agreement, there 7 would be litigation. These would be coins for 8 which the Langbords' rights were preserved and that 9 the government would have to take the steps that 10 they would take, as if we never had these 11 discussions. We would be in a litigation mode. 12 I understood - - well, as far as what 13 I understood, those were the entire basis of our 14 discussions up to that point. 15 Q. So, you understood that it would be 16 either if they were counterfeit, it could go to the 17 Secret Service, or if they have were genuine, that 18 there would be an agreement or there would be 19 litigation? 20 A. Yes. 21 Q. You never believed they would simply 22 be returned to the Langbords? 23 MR. TIRSCHWELL: Objection to the 24 form. 25 THE WITNESS: I'm talking about what</p>	<p>1 Q. Okay. 2 A. Okay. 3 There were discussions about the 4 Fenton litigation, obviously, the In Rem nature of 5 the Fenton litigation. 6 I believe it was the - - our basis 7 for our discussion was that the litigation we would 8 be avoiding, by having an agreement, was an In Rem 9 forfeiture proceeding related to these coins. 10 Q. That was your assumption? 11 A. That was my belief, based on our 12 discussions. That was what I believed, based on 13 all our discussions. 14 Q. In any of your discussions leading up 15 to the transfer, did Greg Weinman ever discuss with 16 you any aspect of a forfeiture proceeding? 17 A. Our discussions certainly reflected 18 that the Langbords were reserving all their rights 19 to the coins - - let me finish - - reserving all 20 their rights to the coins; that we were seeking to 21 avoid the litigation; and, that if we did not avoid 22 the litigation, there would be a - - there would be 23 a - - I'm sorry - - if we did not reach an 24 agreement, there would be a - - there would be 25 proceedings related to the coins.</p>
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<p>1 we discussed, not what I believed. 2 BY MR. SWEET: (Continued) 3 Q. And what you discussed, those two 4 options, were either a resolution or litigation? 5 A. Yes. 6 Q. And there was never a discussion 7 concerning the nature of the litigation, was there? 8 A. There was. 9 Q. When? 10 A. There was discussions at our initial 11 meeting about - - 12 Q. Your "light in passing" reference to 13 CAFRA? 14 A. About CAFRA. 15 There was discussions at the meeting 16 with the agents about - - about waiving venue, 17 which - - 18 Q. That WAS a comment by the Secret 19 Service agent? 20 A. Which I understood, you know, it's 21 the Defendants who waive venue because Plaintiffs 22 can decide to file where they want to file. 23 Q. That was based on the comment by the 24 Secret Service agent? 25 A. By the Secret Service agent.</p>	<p>1 Q. Okay. Can you answer my question? 2 A. I believe I have. 3 Q. No, you haven't. 4 MR. SWEET: Would you go back to my 5 last question, please? 6 (The requested material was read 7 aloud.) 8 Q. That's the question. 9 Could you give me a yes or no and 10 then explain? 11 A. I believe I described for you the 12 nature of our discussions. 13 Q. Okay. I take that as a no? 14 A. No, it's - - 15 Q. Same question for Dan Shaver. 16 MR. TIRSCHWELL: Excuse me. 17 Q. At any point up - - 18 MR. TIRSCHWELL: Excuse me. 19 MR. SWEET: I'm asking a question. 20 I'm responding - - 21 MR. TIRSCHWELL: You didn't let him 22 finish his answer. 23 THE WITNESS: That's not appropriate. 24 BY MR. SWEET: (Continued) 25 Q. Do you have any more to say on that?</p>

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<p>1 A. It is not a no; it's a yes.</p> <p>2 The entire basis of our discussions</p> <p>3 was that if we did not reach an agreement, there</p> <p>4 was going to be a forfeiture proceeding related to</p> <p>5 the coin. That was the - - the implicit and</p> <p>6 explicit purpose of the discussion underlying our</p> <p>7 first meeting, as well as our subsequent</p> <p>8 discussions.</p> <p>9 Q. Now, you just said it was your</p> <p>10 implicit and explicit understanding of the</p> <p>11 communication.</p> <p>12 I'm asking you explicitly, did Dan</p> <p>13 Shaver or Greg Weinman ever say to you, explicitly,</p> <p>14 that there would be a forfeiture proceeding?</p> <p>15 A. Well, as I've described, I think many</p> <p>16 times now, the basis for our discussion was that if</p> <p>17 we did not reach an agreement there would be a</p> <p>18 forfeiture proceeding related to the coins. I</p> <p>19 believe that was for the initial meeting and I</p> <p>20 believe that was consistent with the discussion at</p> <p>21 the meeting with the Secret Service, where we were</p> <p>22 asked to waiver venue, and I believe that it was</p> <p>23 clear throughout that what we were talking about -</p> <p>24 - and explicitly talking about, as made clear by</p> <p>25 those discussions, by what my original discussion</p>	<p>1 So, I'm going to ask him questions</p> <p>2 now about what else he believed about those</p> <p>3 negotiations.</p> <p>4 Are you going to instruct him not to</p> <p>5 answer those questions?</p> <p>6 MR. TIRSCHWELL: Well, I think we've</p> <p>7 been very clear that he's been testifying</p> <p>8 about his understanding, to the extent he had</p> <p>9 an understanding, based on his dealings with</p> <p>10 the government and he's been instructed to -</p> <p>11 - and I don't believe he has revealed his</p> <p>12 understanding or thoughts that are - - that</p> <p>13 may be based on his own legal thinking,</p> <p>14 strategy, et cetera</p> <p>15 So, that's our position and we'll</p> <p>16 stick to it and I believe we have been</p> <p>17 sticking to it.</p> <p>18 MR. SWEET: Our position is that</p> <p>19 you've waived the attorney-client privilege</p> <p>20 with respect to your understanding and</p> <p>21 beliefs based on these conversations.</p> <p>22 And I'll - -</p> <p>23 MR. TIRSCHWELL: Obviously, we</p> <p>24 disagree, let me just say.</p> <p>25 MR. SWEET: You had a good - -</p>
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<p>1 about what type of agreement we would be interested</p> <p>2 in talking about and the subsequent discussions,</p> <p>3 including with the Secret Service related to venue</p> <p>4 that - - it would be an In Rem forfeiture</p> <p>5 proceeding related to the coins.</p> <p>6 Q. Okay.</p> <p>7 A. I believe that was the entire basis</p> <p>8 that we were talking about reaching an agreement to</p> <p>9 avoid that type of litigation.</p> <p>10 Q. Okay.</p> <p>11 MR. SWEET: I'm going to make it very</p> <p>12 clear for the record now that you are</p> <p>13 improperly using the work product privilege</p> <p>14 by allowing your witness to testify about his</p> <p>15 belief, his unilateral belief about a</p> <p>16 discussion that occurred without - - while</p> <p>17 he's refusing to answer other questions about</p> <p>18 his beliefs arising out of those</p> <p>19 communications.</p> <p>20 He's refusing to answer very specific</p> <p>21 questions about whether certain discussions</p> <p>22 were had explicitly, but he's allowing - -</p> <p>23 he's instead using his unilateral beliefs</p> <p>24 about what occurred to be - - to form the</p> <p>25 basis of his answers.</p>	<p>1 THE WITNESS: If it wasn't - -</p> <p>2 MR. SWEET: There's no question</p> <p>3 pending.</p> <p>4 THE WITNESS: I would like to</p> <p>5 clarify.</p> <p>6 If it wasn't clear to you as I</p> <p>7 recited my facts, I was expressing, as you</p> <p>8 asked me to do, my understanding of the</p> <p>9 statements made by the government</p> <p>10 representatives who I dealt with, that was</p> <p>11 from the Mint, as well as the Secret Service.</p> <p>12 BY MR. SWEET: (Continued)</p> <p>13 Q. Which of these meetings did Dan</p> <p>14 Shaver say the word "forfeiture"?</p> <p>15 A. Mr. Sweet, I just went through the</p> <p>16 discussions we've had.</p> <p>17 Q. It's true that he never did, isn't</p> <p>18 it?</p> <p>19 A. In detail. In detail.</p> <p>20 Q. It's true he never did say forfeiture</p> <p>21 or CAFRA to you; isn't that true?</p> <p>22 A. Well, no.</p> <p>23 The substance of the discussion - -</p> <p>24 the basis of our discussions was avoiding a</p> <p>25 forfeiture proceeding.</p>

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<p>1 Q. In your mind?</p> <p>2 A. Let me finish.</p> <p>3 We talked about the Fenton litigation</p> <p>4 and how we would avoid that type of litigation,</p> <p>5 meaning a forfeiture proceeding on the coins.</p> <p>6 The entire basis of our initiating</p> <p>7 the discussions and their expressing interest to me</p> <p>8 was to see if we can have an agreement that would</p> <p>9 avoid the identical litigation that we had for</p> <p>10 years. We -- they were very familiar with it and</p> <p>11 I was very familiar with it, which was an In Rem</p> <p>12 proceeding related to the coins.</p> <p>13 MR. SWEET: Understood what your</p> <p>14 position is.</p> <p>15 BY MR. SWEET: (Continued)</p> <p>16 Q. Isn't it true, Mr. Berke, that</p> <p>17 neither Mr. Shaver nor Mr. Weinman ever said to</p> <p>18 you, explicitly, the word "forfeiture" or the word</p> <p>19 "CAFRA" at any time before the transfer of the</p> <p>20 Double Eagles to the possession of the United</p> <p>21 States?</p> <p>22 A. Well, what I can tell you is that at</p> <p>23 the meeting we had with the Secret Service, on --</p> <p>24 in Brooklyn, prior to the transfer, there was an</p> <p>25 explicit discussion, in which they were very much a</p>	<p>1 MR. TIRSCHWELL: We didn't agree, is</p> <p>2 that you're what saying, that we didn't agree</p> <p>3 to break at 1:30, when you asked an hour ago</p> <p>4 if we should go for one hour?</p> <p>5 MR. SWEET: I don't recall.</p> <p>6 But, Eric, I have a few more</p> <p>7 questions and then we'll break.</p> <p>8 BY MR. SWEET: (Continued)</p> <p>9 Q. You were -- you had a good</p> <p>10 relationship with Jane Levine; correct?</p> <p>11 A. We --</p> <p>12 MR. TIRSCHWELL: When?</p> <p>13 When?</p> <p>14 Q. At all times following the Fenton</p> <p>15 litigation.</p> <p>16 A. We had had a good professional -- we</p> <p>17 were -- we had a good professional relationship.</p> <p>18 Q. Okay. And you knew she was in the</p> <p>19 loop on the Langbord situation; correct?</p> <p>20 MR. TIRSCHWELL: Objection to the</p> <p>21 form, in the loop," and when.</p> <p>22 THE WITNESS: Can you clarify your</p> <p>23 question?</p> <p>24 BY MR. SWEET: (Continued)</p> <p>25 Q. You knew that she was involved, in</p>
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<p>1 part of -- they were there -- in which there was</p> <p>2 a discussion about waiving venue for a forfeiture</p> <p>3 proceeding.</p> <p>4 And the Secret Service asked those</p> <p>5 questions?</p> <p>6 Yes, they did.</p> <p>7 And did I understand, though, that</p> <p>8 the Secret Service and Mr. Weinman and Mr. Shaver</p> <p>9 were all speaking on behalf of the government?</p> <p>10 I certainly did.</p> <p>11 MR. SWEET: I see you're not going to</p> <p>12 answer the question.</p> <p>13 I think you'll have to, once we get</p> <p>14 in front of a judge.</p> <p>15 THE WITNESS: I believe I did answer</p> <p>16 the question.</p> <p>17 MR. TIRSCHWELL: It's 1:30. Let's</p> <p>18 take our break.</p> <p>19 MR. SWEET: I have a couple more</p> <p>20 questions and we'll break real soon.</p> <p>21 MR. TIRSCHWELL: No, let's break now,</p> <p>22 as we agreed.</p> <p>23 It's 1:40.</p> <p>24 MR. SWEET: We didn't agree.</p> <p>25 I have a few more questions, sir.</p>	<p>1 some respects, in handling the government's</p> <p>2 interest in the Langbord situation?</p> <p>3 A. Are you talking about prior to the</p> <p>4 transfer of the coins?</p> <p>5 Q. Yes.</p> <p>6 A. I don't recall knowing that at that</p> <p>7 point.</p> <p>8 Q. Jane Langbord -- Jane Levine was</p> <p>9 your principal lawyer contact during the five years</p> <p>10 of the Fenton litigation; correct?</p> <p>11 A. She handled the case for the U.S.</p> <p>12 Attorney's Office for the Southern District on</p> <p>13 behalf of the U.S. Mint. The party that was</p> <p>14 litigating was the U.S. Mint. She was the lawyer</p> <p>15 for that office, handling it for the client, the</p> <p>16 Mint.</p> <p>17 Q. So, at any time between August, your</p> <p>18 first meeting with -- in Washington, in August,</p> <p>19 and the transfer of the Double Eagles on September</p> <p>20 22nd, did you call Jane Levine and discuss with her</p> <p>21 issues concerning the 1933 Double Eagles that the</p> <p>22 Langbords had?</p> <p>23 A. Well, I don't think it was my</p> <p>24 position to decide who should be involved in the</p> <p>25 government and I don't recall having been told</p>

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<p>1 prior to the transfer that she was in any way - -</p> <p>2 she had been in any way brought in or asked to</p> <p>3 consult for the Mint on the matter.</p> <p>4 Q. So, the answer is no?</p> <p>5 A. The answer is no.</p> <p>6 That's my recollection.</p> <p>7 Q. Do you recall at the meeting, on</p> <p>8 September 15th in Brooklyn, whether there was a</p> <p>9 need for a seizure warrant?</p> <p>10 A. I don't recall that issue being</p> <p>11 raised.</p> <p>12 Q. And you described the Secret Service</p> <p>13 discussing venue.</p> <p>14 Did the Secret Service agents, either</p> <p>15 of them, mention the word "forfeiture," explicitly?</p> <p>16 A. As I sit here today, I can't tell you</p> <p>17 the exact words they used.</p> <p>18 I can tell you my understanding, from</p> <p>19 the words that they did use, was that they were</p> <p>20 talking about waiver of venue for a forfeiture</p> <p>21 action against the coin and it made sense to me - -</p> <p>22 withdraw what made sense to me - - that's what I</p> <p>23 understood the Secret Service agent asking - - to</p> <p>24 be asking.</p> <p>25 Not necessarily a forfeit - - I</p>	<p>1 forfeiture proceeding could proceed in New York.</p> <p>2 Q. And you assumed it was a forfeiture</p> <p>3 proceeding?</p> <p>4 A. I'm not saying I assumed it. I</p> <p>5 understood that from their statements. I didn't</p> <p>6 assume anything. I understood that from their</p> <p>7 statements, which was quite clear, and why I said</p> <p>8 we would be prepared to do that.</p> <p>9 MR. TIRSCHWELL: I would like to</p> <p>10 clarify one thing on the record before - - I</p> <p>11 gather you're ready to break for lunch now?</p> <p>12 MR. SWEET: Yes.</p> <p>13 MR. TIRSCHWELL: Okay.</p> <p>14 Because I'm not sure. You made a</p> <p>15 lengthy comment, Mr. Sweet, about what Mr.</p> <p>16 Berke was or wasn't doing. I wanted to make</p> <p>17 sure we're all clear here and that he under-</p> <p>18 stood your question and you understood what</p> <p>19 he was trying to explain.</p> <p>20 So, I would like to ask the question</p> <p>21 and have Mr. Berke make clear for the record</p> <p>22 the following: That is:</p> <p>23 EXAMINATION BY</p> <p>24 MR. TIRSCHWELL:</p> <p>25 Q. In your conversations with Mr.</p>
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<p>1 recall them specifically asking for a waiver of</p> <p>2 venue, for a forfeiture proceeding.</p> <p>3 MR. TIRSCHWELL: I want to clarify</p> <p>4 one thing before.</p> <p>5 BY MR. SWEET: (Continued)</p> <p>6 Q. For a forfeiture proceeding?</p> <p>7 Did the word "forfeiture" come out of</p> <p>8 their mouths or was it a waiver of venue?</p> <p>9 A. What I'm telling you, I don't recall</p> <p>10 the specific words that they used, but I can tell</p> <p>11 you that my understanding of the words that they</p> <p>12 used was that they were seeking a waiver of venue</p> <p>13 for a forfeiture proceeding against the '33 Double</p> <p>14 Eagles.</p> <p>15 Q. Do you know if they were talking</p> <p>16 about a waiver of venue with respect to a search</p> <p>17 warrant or a seizure warrant?</p> <p>18 A. I had a very clear understanding,</p> <p>19 based on our communications, that they were asking</p> <p>20 me for a waiver of venue and I believe that they</p> <p>21 would only ask me for a waiver of venue if I was a</p> <p>22 party in the litigation, which I understood to be a</p> <p>23 litigation against the coin, which I understood why</p> <p>24 they had, from their statements, that they were</p> <p>25 asking me for a waiver of venue so that that</p>	<p>1 Weinman and Mr. Shaver, up to the point of the</p> <p>2 transfer of the coins, and leaving aside your</p> <p>3 understanding or your belief, did they expressly</p> <p>4 refer to the alternative to a settlement being a</p> <p>5 forfeiture or CAFRA proceeding?</p> <p>6 Did they expressly tell that you?</p> <p>7 MR. TIRSCHWELL: I'm not sure that</p> <p>8 that's clear on the record, one way or the</p> <p>9 other.</p> <p>10 THE WITNESS: I don't recall them - -</p> <p>11 meaning Mr. Shaver or Mr. Weinman - - using</p> <p>12 the word "CAFRA" and I cannot say, as I sit</p> <p>13 here today, whether they referred to</p> <p>14 forfeiture or not.</p> <p>15 MR. TIRSCHWELL: I think the record</p> <p>16 is clear as to what you understood the</p> <p>17 totality of the conversations to be about.</p> <p>18 MR. SWEET: I appreciate the effort</p> <p>19 to have your witness answer the question.</p> <p>20 That was great, for the first time.</p> <p>21 MR. TIRSCHWELL: I don't agree with</p> <p>22 that.</p> <p>23 MR. SWEET: You don't have to.</p> <p>24 We're going to break now. It's 1:45.</p> <p>25 Before we break, could we assume that</p>

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1 we're going to just keep working hard and  
2 continue or do you want to take a ten-minute  
3 break now and work through?

4 I don't want to take up a lot of  
5 time.

6 MR. TIRSCHWELL: I need - -

7 MR. SWEET: If the deposition is  
8 going to end before we're done - -

9 MR. TIRSCHWELL: We're on the record.

10 MR. SWEET: We're off the record.

11 (Recess: 1:46 p.m.)

12 (Resumed: 2:39 p.m.)

13 EXAMINATION (Continued)

14 BY MR. SWEET:

15 Q. Are you good?

16 A. I'm good.

17 Whenever you're ready.

18 Q. We'll begin.

19 Mr. Berke, is it fair to say that as  
20 of September, the end of the meeting on September  
21 15th in Brooklyn, the representatives of the United  
22 States Mint had consistently maintained to you that  
23 it was their belief that the Double Eagles were the  
24 property of the United States?

25 A. I would disagree with that.

1 thought process.

2 But go ahead.

3 THE WITNESS: What we discussed about  
4 the issues from the Fenton litigation, which  
5 related to issues as to how the coin may have  
6 left the Mint and whether the government has  
7 a claim to forfeit the '33 Double Eagles, in  
8 substance.

9 (Mr. Shaver left the conference  
10 room.)

11 BY MR. SWEET: (Continued)

12 Q. Did either Mr. Shaver or Mr. Weinman,  
13 at any time, convey to you the impression that they  
14 did not believe that the Double Eagles were the  
15 property belonging to the United States?

16 A. I'm having trouble answering your  
17 question as formulated. I want to be responsive to  
18 your question.

19 I don't believe there was any  
20 discussion that was, well, these belong to the  
21 United States or these don't belong to the United  
22 States.

23 I believe the discussions were that  
24 there would be a dispute about the coins, that  
25 would involve the same issues, essentially, or an

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1 Q. And in what way?

2 A. I would disagree.

3 I don't believe that statement - - I  
4 don't believe that statement was made.

5 I believe it was clearly discussed,  
6 in substance, that if there wasn't an agreement  
7 there would be disputed issues related to the coin.  
8 But I don't recall an occasion where that statement  
9 was explicitly stated, as you said.

10 Q. I'm asking about explicit statements.

11 Now let's talk about the issue. What  
12 issues did you understand would have to be  
13 resolved?

14 A. Well, I understood that - -

15 MR. TIRSCHWELL: I'm sorry to  
16 interrupt.

17 THE WITNESS: Based on - -

18 MR. TIRSCHWELL: Clearly, we're  
19 answering only with respect to his  
20 understanding as gleaned from or derived from  
21 conversations with the government. We're not  
22 answering - - we're maintaining work product  
23 protection and any other available privilege  
24 as to any thinking that Mr. Berke had as  
25 derived from his own legal analysis or

1 overlap of issues, I should say, that were involved  
2 in the Fenton litigation.

3 Q. And one of those issues was who has  
4 title to the 1933 Double Eagles; is that correct?

5 A. Well, I would describe it a little  
6 more broadly than that and that relates to the  
7 issues as to whether or not - - how the coins may  
8 have left the Mint and whether there's a basis for  
9 the government to seek forfeiture of those coins.

10 Let me just say, and so I believe  
11 that the Langbords had their position related to  
12 the coins and the government may have had their  
13 position related to the coins and we're talking  
14 about an agreement. Just as in the Fenton  
15 litigation, it was a settlement. But that didn't  
16 involve both sides saying, okay, you're right and  
17 okay, you're right. It was a settlement of a  
18 disputed set of issues.

19 And at that point what we were  
20 talking about was a potential settlement of a  
21 disputed set of issues as opposed to a discussion;  
22 this is - - this is the issue that I'm impressing  
23 upon you or this is the issue I'm impressing upon  
24 you. It was whether a settlement would resolve all  
25 disputed issues.

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<p>1 And I want to be clear about why I'm</p> <p>2 having difficulty answering this specific question</p> <p>3 that you were asking.</p> <p>4 (Mr. Shaver returned to the</p> <p>5 conference room.)</p> <p>6 Q. You understood about the transfer, on</p> <p>7 September 22nd, that the government and the</p> <p>8 Langbords had different views about who had title</p> <p>9 to the 1933 Double Eagles; is that correct?</p> <p>10 A. Well, again, I wouldn't agree with</p> <p>11 that statement as framed because just as -- as I</p> <p>12 mentioned at the outset, just as Mr. Fenton and the</p> <p>13 government and Mr. Fenton had disputes and they</p> <p>14 settled it, I did not know whether or not these</p> <p>15 were positions that the government was going to be</p> <p>16 prepared to litigate as opposed to settling.</p> <p>17 But I certainly knew if we didn't</p> <p>18 reach a settlement and we were in litigation, that,</p> <p>19 based on their statements, that the parties would</p> <p>20 be taking positions similar to what was taken in</p> <p>21 the Fenton case, which was the government said, we</p> <p>22 have a right to these coins, and the -- in that</p> <p>23 case, the Claimant said no, I have a right to the</p> <p>24 coins.</p> <p>25 Q. When you say "a right," you're</p>	<p>1 answer, on my instruction.</p> <p>2 It's legal analysis or assessment of</p> <p>3 what the Barnard case was.</p> <p>4 BY MR. SWEET: (Continued)</p> <p>5 Q. Do you know whether the Barnard case</p> <p>6 concerned title to that particular 1933 Double</p> <p>7 Eagle?</p> <p>8 MR. TIRSCHWELL: Objection to the</p> <p>9 form.</p> <p>10 THE WITNESS: (No response.)</p> <p>11 Q. You don't know, do you?</p> <p>12 MR. SWEET: Okay.</p> <p>13 MR. TIRSCHWELL: Objection.</p> <p>14 Q. The September 15th meeting, would you</p> <p>15 characterize it as a friendly meeting?</p> <p>16 A. I'm sorry, I just didn't hear the</p> <p>17 date.</p> <p>18 Q. The September 15th meeting, in</p> <p>19 Brooklyn.</p> <p>20 A. I wouldn't describe it as friendly or</p> <p>21 unfriendly. It was just different because I had</p> <p>22 never met the Secret Service agents. It was just -</p> <p>23 - I wouldn't describe it as friendly or unfriendly.</p> <p>24 Q. There was no sort of coercion though,</p> <p>25 was there?</p>
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<p>1 talking about ownership title; is that correct?</p> <p>2 A. Again, those are very loaded terms.</p> <p>3 I think in forfeiture proceedings,</p> <p>4 you know, a party prevails in the forfeiture</p> <p>5 proceeding. That's why I'm not using necessarily</p> <p>6 ownership, because that doesn't necessarily carry</p> <p>7 title and what happens in the forfeiture action,</p> <p>8 it's whether the government has a basis to forfeit</p> <p>9 the coins and there can be a whole range of issues</p> <p>10 that impact that question.</p> <p>11 Q. Okay. And the Barnard,</p> <p>12 B-A-R-N-A-R-D, case, that was a replevin case; is</p> <p>13 that correct?</p> <p>14 MR. TIRSCHWELL: I'm going to object</p> <p>15 to his legal analysis of the Barnard case.</p> <p>16 MR. SWEET: Okay. If you object to</p> <p>17 him saying whether it was a replevin case,</p> <p>18 you can. I don't mean to.</p> <p>19 BY MR. SWEET: (Continued)</p> <p>20 Q. Do you know whether the Barnard case</p> <p>21 was a replevin case?</p> <p>22 MR. TIRSCHWELL: Same objection.</p> <p>23 BY MR. SWEET: (Continued)</p> <p>24 Q. You don't know?</p> <p>25 MR. TIRSCHWELL: No, he didn't</p>	<p>1 A. There was none.</p> <p>2 Q. Do you recall Mr. Shaver telling you,</p> <p>3 at that meeting, that the government would not</p> <p>4 agree to any conditions on the surrender of the</p> <p>5 1933 Double Eagles?</p> <p>6 A. I do not.</p> <p>7 Q. You don't remember one way or the</p> <p>8 other?</p> <p>9 A. No, I don't remember him making that</p> <p>10 statement.</p> <p>11 Q. There was no discussion with the</p> <p>12 government -- between you and the government</p> <p>13 concerning having the Double Eagles authenticated</p> <p>14 by an independent expert, was there?</p> <p>15 A. I don't recall that.</p> <p>16 My only hesitation is that when there</p> <p>17 had been some delays in having the coins tested,</p> <p>18 it's possible that it may have come up, whether --</p> <p>19 whether the delays were caused by the Mint's expert</p> <p>20 not being available and whether there's a</p> <p>21 possibility of somebody else doing it.</p> <p>22 I know there was that discussion in</p> <p>23 the prior case and I just can't say that discussion</p> <p>24 didn't happen. But if it did, it would have been</p> <p>25 after the September '04 transfer.</p>

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<p>1 Q. Did it come up in the prior case?</p> <p>2 A. Only in that there was an outside</p> <p>3 person who tested the coin regarding authenticity.</p> <p>4 There was somebody the Mint hired who was an</p> <p>5 expert, who did the analysis comparing the coins</p> <p>6 and I just don't remember what the role was, but I</p> <p>7 don't think they were a consultant the Mint used as</p> <p>8 opposed to a Mint employee. They did it for the</p> <p>9 government.</p> <p>10 Q. You never discussed, with anyone from</p> <p>11 the Mint, having -- as an alternative to</p> <p>12 transferring the Double Eagles to the possession of</p> <p>13 the government, having them maintained in another</p> <p>14 location and tested independently?</p> <p>15 A. That was not discussed.</p> <p>16 Q. And you were certain at that time</p> <p>17 that the Double Eagles that the Langbords</p> <p>18 possessed, you were certain that they were genuine,</p> <p>19 were you not?</p> <p>20 MR. TIRSCHWELL: Well, to the extent</p> <p>21 it calls on him to disclose, I don't see how</p> <p>22 he can answer that without exposing what his</p> <p>23 client -- what he may have discussed with</p> <p>24 his client or clients.</p> <p>25 You can ask him whether he</p>	<p>1 MR. TIRSCHWELL: Well.</p> <p>2 THE WITNESS: That's a different</p> <p>3 question.</p> <p>4 MR. SWEET: I'm trying to understand.</p> <p>5 BY MR. SWEET: (Continued)</p> <p>6 Q. What did you mean here --</p> <p>7 A. Okay.</p> <p>8 Q. With what you told the reporter?</p> <p>9 A. That I was not asking that they be</p> <p>10 authenticated; that I was comfortable that there</p> <p>11 was not a question that they were authentic, given</p> <p>12 the circumstances and the facts, but that the Mint</p> <p>13 wanted to authenticate them to make sure that they</p> <p>14 were real.</p> <p>15 Q. And --</p> <p>16 A. This was not a joint request, but a</p> <p>17 request of the Mint.</p> <p>18 Q. Okay. When you say "the</p> <p>19 circumstances," what circumstances were those?</p> <p>20 MR. TIRSCHWELL: I don't think -- I</p> <p>21 think we have the same problem, that</p> <p>22 explaining the basis for this answer would</p> <p>23 require him to divulge communications with</p> <p>24 his client.</p> <p>25 And I don't think, having given his</p>
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<p>1 independently tested them or sent them to be</p> <p>2 tested, had a basis on that sort of ground,</p> <p>3 then you can ask him.</p> <p>4 But I don't -- can you answer that</p> <p>5 question, in part, from discussing your</p> <p>6 conversations with your client?</p> <p>7 THE WITNESS: No.</p> <p>8 BY MR. SWEET: (Continued)</p> <p>9 Q. Let me refer you, Mr. Berke, to</p> <p>10 exhibit?</p> <p>11 MR. TIRSCHWELL: One.</p> <p>12 Q. One, page 4.</p> <p>13 A. (Witness complies.)</p> <p>14 Q. In the middle of the page, the</p> <p>15 reporter says, "Why did the coins need to be</p> <p>16 authenticated?"</p> <p>17 And your response is, "From our</p> <p>18 prospective, they didn't need to be authenticated.</p> <p>19 We had no question."</p> <p>20 A. I agree with that statement.</p> <p>21 Q. You said that to the reporter?</p> <p>22 A. That was my prospective.</p> <p>23 Q. So, it was your understanding at the</p> <p>24 time that there was no question as to the</p> <p>25 authenticity of the Double Eagles?</p>	<p>1 answer, he's waived anything beyond the</p> <p>2 answer itself, which you have.</p> <p>3 MR. SWEET: Well, it wouldn't be</p> <p>4 attorney-client privilege if he tells us</p> <p>5 facts.</p> <p>6 And here he's making a statement to</p> <p>7 the reporter that he was -- had no question</p> <p>8 -- here he said, from his answer, he's</p> <p>9 saying that he had no question about the</p> <p>10 authenticity.</p> <p>11 So, the basis for that, the fact he</p> <p>12 said "the circumstances," so I think we're</p> <p>13 entitled to know what the circumstances are.</p> <p>14 You don't have to tell us where you</p> <p>15 got that, but what are the facts that led you</p> <p>16 to -- to the conclusion that they are</p> <p>17 authentic.</p> <p>18 THE WITNESS: Can I consult about</p> <p>19 privilege?</p> <p>20 (Off-the-record discussion between</p> <p>21 the witness and Mr. Tirschwell.)</p> <p>22 MR. TIRSCHWELL: Well, he's going to</p> <p>23 tell you it does appear, now that I've had a</p> <p>24 chance to consult, that he can answer that</p> <p>25 question without getting into any</p>

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<p>1 conversations he had with his client.</p> <p>2 So, to that extent, without waiving</p> <p>3 any privilege, go ahead and answer it.</p> <p>4 THE WITNESS: The circumstances I'm</p> <p>5 talking about is the connection of the coins</p> <p>6 to Israel Switt.</p> <p>7 BY MR. SWEET: (Continued)</p> <p>8 Q. It was the understanding that you're</p> <p>9 right because they originated in - - they came into</p> <p>10 the possession of the Langbords through Israel</p> <p>11 Switt, you were sure they were authentic?</p> <p>12 A. Based on that factor, I did not</p> <p>13 believe they needed to be authenticated.</p> <p>14 Well, withdrawn.</p> <p>15 Yeah, I - - no, I can say that I</p> <p>16 didn't think they needed to be authenticated; that</p> <p>17 they needed to establish that they were 1933 Double</p> <p>18 Eagles.</p> <p>19 Q. Did you, at any time, tell the Mint</p> <p>20 that because of the circumstances of how they were</p> <p>21 found you did not believe they needed to be</p> <p>22 authenticated?</p> <p>23 A. I do believe that I did say, you know</p> <p>24 - - I don't believe there's any question that they</p> <p>25 are authentic, but I understand your request to</p>	<p>1 Q. Since the transfer, have you?</p> <p>2 MR. TIRSCHWELL: Well, I mean, to the</p> <p>3 extent that - - and I'm not sure I know the</p> <p>4 answer to this - - but to the extent there</p> <p>5 were consultations with someone as part of a</p> <p>6 legal strategy, I don't think he's required</p> <p>7 to reveal that. That would be - - you know,</p> <p>8 that person would be - -</p> <p>9 MR. SWEET: I'm not asking you to</p> <p>10 reveal who; I'm just asking you first</p> <p>11 threshold questions.</p> <p>12 BY MR. SWEET: (Continued)</p> <p>13 Q. Have the Langbords done an appraisal</p> <p>14 of the 1933 Double Eagles at issue in the</p> <p>15 litigation?</p> <p>16 MR. SWEET: I don't see how that can</p> <p>17 possibly be privileged.</p> <p>18 MR. TIRSCHWELL: Give me a minute to</p> <p>19 think about it.</p> <p>20 MR. SWEET: Sure.</p> <p>21 (Recess: 2:56 p.m.)</p> <p>22 (Resumed: 3:00 p.m.)</p> <p>23 MR. SWEET: The question was:</p> <p>24 EXAMINATION (Continued)</p> <p>25 BY MR. SWEET:</p>
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<p>1 authenticate them.</p> <p>2 Q. And that's based upon the fact of</p> <p>3 your connection with Switt and the authenticity on</p> <p>4 the fact that you recognize that at some point in</p> <p>5 the history of these things he had involvement with</p> <p>6 a large number of them?</p> <p>7 A. I'm not prepared to say that.</p> <p>8 What I am prepared to say - -</p> <p>9 MR. TIRSCHWELL: Again, be careful to</p> <p>10 answer, not to reveal your legal analysis</p> <p>11 with - -</p> <p>12 MR. SWEET: It's all factual. I'm not</p> <p>13 asking for legal analysis.</p> <p>14 MR. TIRSCHWELL: I'm cautioning him</p> <p>15 to make sure he keeps it factual.</p> <p>16 THE WITNESS: I don't think there's</p> <p>17 more I can say now without revealing</p> <p>18 attorney-client privilege communications.</p> <p>19 BY MR. SWEET: (Continued)</p> <p>20 Q. At any time before the transfer on</p> <p>21 September 22nd did you determine the value of the</p> <p>22 Double Eagles through an appraisal or some other</p> <p>23 means?</p> <p>24 A. No.</p> <p>25 I don't believe so.</p>	<p>1 Q. Whether since the transfer of the</p> <p>2 Double Eagles on September 22nd, the Plaintiffs,</p> <p>3 the Langbords, have done an appraisal or some</p> <p>4 estimate of the value of the Double Eagles?</p> <p>5 MR. TIRSCHWELL: And we've conferred,</p> <p>6 Mr. Berke and I, about issues of privilege</p> <p>7 and work product and what I can represent for</p> <p>8 the record is there has been no appraisal, to</p> <p>9 the extent there may have been conversations</p> <p>10 with third parties, about what the coins or</p> <p>11 how the coins might be valued or what they</p> <p>12 might be valued at. Those conversations are</p> <p>13 part of our legal strategy and we assert work</p> <p>14 product protection as to those conversations.</p> <p>15 MR. SWEET: Okay.</p> <p>16 Q. Well, you said there were</p> <p>17 conversations with a third party.</p> <p>18 Who were the third parties?</p> <p>19 MR. TIRSCHWELL: Well, it's certainly</p> <p>20 work product to those, as well.</p> <p>21 MR. SWEET: Over the identity of the</p> <p>22 third party?</p> <p>23 MR. TIRSCHWELL: Who we decided to</p> <p>24 consult with about the coins I don't think is</p> <p>25 something you're entitled to.</p>

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<p>1 BY MR. SWEET: (Continued)</p> <p>2 Q. Do you have a number; do you have an</p> <p>3 appraisal number, an estimate or some number as to</p> <p>4 the value of the coins?</p> <p>5 MR. TIRSCHWELL: I don't think we</p> <p>6 have to answer that.</p> <p>7 MR. SWEET: Are you instructing him</p> <p>8 not to answer that?</p> <p>9 MR. TIRSCHWELL: I am.</p> <p>10 And I should say, also, that the</p> <p>11 additional basis for the objection - -</p> <p>12 MR. SWEET: Let's get them all out.</p> <p>13 MR. TIRSCHWELL: For this objection,</p> <p>14 on questions like this, is the reason Mr.</p> <p>15 Berke is here is not so you can, you know,</p> <p>16 ask him about these things. In any ordinary</p> <p>17 case you would never have a chance to depose</p> <p>18 opposing counsel about these things.</p> <p>19 He's here for the sole reason that he</p> <p>20 was a witness to certain communications with</p> <p>21 the government and he's here to answer</p> <p>22 questions about that.</p> <p>23 I do not think - - and I feel very</p> <p>24 strongly about this - - this is an</p> <p>25 inappropriate opportunity for you to be</p>	<p>1 interactions with the government.</p> <p>2 And so, you continue to misrepresent</p> <p>3 the record.</p> <p>4 You can make your baseless</p> <p>5 accusations as many times as you want about</p> <p>6 our client, but you're the one who is</p> <p>7 actually misstating, misrepresenting the</p> <p>8 record repeatedly.</p> <p>9 MR. SWEET: We'll get there.</p> <p>10 BY MR. SWEET: (Continued)</p> <p>11 Q. Let's go to the letter, the revised</p> <p>12 letter of September 21st.</p> <p>13 MR. SWEET: We'll mark this as Berke</p> <p>14 4.</p> <p>15 (Letter, 1 page, so marked Berke</p> <p>16 Exhibit 4 for identification by counsel.)</p> <p>17 (Handed to the witness.)</p> <p>18 (Witness reviews the exhibit.)</p> <p>19 Q. Are you familiar with this letter?</p> <p>20 A. Yes.</p> <p>21 Q. Is this your first written</p> <p>22 correspondence to the government on the behalf of</p> <p>23 the Langbords concerning the 1933 Double Eagles?</p> <p>24 A. There may be e-mails, but I'm not</p> <p>25 just sure if they were before this. But there were</p>
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<p>1 asking him the kinds of questions that, but</p> <p>2 for the fact that he was a party to the to</p> <p>3 certain conversations and communications with</p> <p>4 the government, you would never have any</p> <p>5 opportunity to ask him as part of a</p> <p>6 deposition.</p> <p>7 MR. SWEET: Thanks, Eric.</p> <p>8 Usually clients don't hide behind</p> <p>9 their attorneys on every possible relevant</p> <p>10 fact of the case and usually requests for</p> <p>11 admissions are responses and admission or</p> <p>12 denial and not, again, a reference to "talk</p> <p>13 to Mr. Berke when you take his deposition."</p> <p>14 MR. TIRSCHWELL: That's the second.</p> <p>15 MR. SWEET: We'll take the deposition</p> <p>16 and you can assert objections as you want and</p> <p>17 we'll leave it to a judge to decide whether</p> <p>18 they are legitimate objections.</p> <p>19 MR. TIRSCHWELL: We will, indeed.</p> <p>20 I note for the record your second</p> <p>21 reference to our responses to your requests</p> <p>22 for admissions and I'm confident, having</p> <p>23 reviewed them many times recently, that the</p> <p>24 only questions that we've referred you to Mr.</p> <p>25 Berke on were questions you posed about his</p>	<p>1 e-mails.</p> <p>2 Q. Other than e-mails?</p> <p>3 A. I believe this is the first letter.</p> <p>4 Q. Now, you sent this the afternoon</p> <p>5 before the transfer itself; right?</p> <p>6 A. I had told Mr. Shaver and Mr. Weinman</p> <p>7 I would be sending this letter as confirmation of a</p> <p>8 full reservation of rights and then I sent the</p> <p>9 letter the day before our meeting.</p> <p>10 Q. Okay. The last meeting you had had,</p> <p>11 the September 15th meeting, was the last in-person</p> <p>12 meeting was September 15th; right?</p> <p>13 A. The last in-person meeting was</p> <p>14 September 15th.</p> <p>15 Q. And then there were a couple of</p> <p>16 phone calls; right?</p> <p>17 A. My recollection is a couple of phone</p> <p>18 calls.</p> <p>19 Q. Then you waited until the night</p> <p>20 before to send this?</p> <p>21 A. I wouldn't agree I waited until the</p> <p>22 night before.</p> <p>23 I sent it the day before our meeting</p> <p>24 because I - - and - - yes.</p> <p>25 Q. Now, when it says, "our</p>

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<p>1 understanding," do you see that, the second 2 sentence? 3 (Witness reviews the exhibit.) 4 Q. "Based on our understanding that the 5 government will test." 6 A. Huh-huh. Huh-huh. 7 Q. That understanding that you had, did 8 you ever expressly talk to Mr. Weinman or Mr. 9 Shaver to determine whether that was also their 10 understanding? 11 A. That was what we discussed when we - 12 - when we reached an agreement that this would 13 concur, this would be discussed. 14 Q. Obviously, there's a dispute about 15 what the understanding was. That's one of the 16 reasons we're here. 17 The question I have for you is: When 18 you say, "Based on our understanding," you're 19 referring - - "our" is referring to the Langbords; 20 right? 21 MR. TIRSCHWELL: Well, I don't think 22 he - - I think you can ask. 23 MR. SWEET: He wrote the letter. 24 MR. TIRSCHWELL: Yes. 25 MR. SWEET: I asked the question.</p>	<p>1 of this case? 2 MR. TIRSCHWELL: Are you now allowing 3 me to speak? 4 MR. SWEET: No. 5 I would like an answer. 6 MR. TIRSCHWELL: Well, I've made my 7 objection. 8 And my instruction. 9 BY MR. SWEET: (Continued) 10 Q. Who does the "our" refer to? 11 MR. TIRSCHWELL: I've made my 12 objection and given my instruction. 13 So the record is clear, whether you 14 want me to speak or not is not really the 15 point. 16 I am objecting to the question that 17 would call for what Mr. Berke's thinking was 18 in choosing specific words in this letter. 19 If you want to ask him about what the 20 understanding was, what understanding there 21 was and what it was based on, he can answer 22 that. 23 Q. So, the question is: In using the 24 words "our understanding" in this letter, who do 25 you - - who did you intend "our" to refer to, the</p>
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<p>1 Do you want to object? 2 MR. TIRSCHWELL: Are you going to let 3 me talk? 4 MR. SWEET: I'm going to let you 5 object, but not start off with your 6 explanation - - 7 MR. TIRSCHWELL: I object. 8 MR. SWEET: Telling the witness how 9 he should think about the question. 10 That I'm not going to let you do. 11 You can object as to form; you can 12 object on a basis of a privilege and instruct 13 him not to answer. 14 MR. TIRSCHWELL: All right; I object 15 on the basis of work product and instruct him 16 not to answer. 17 And if you don't want - - 18 MR. SWEET: Well - - 19 MR. TIRSCHWELL: You didn't let me 20 explain, so now that's what happens. 21 MR. SWEET: That's fine. 22 So, it is your explanation now that 23 he can't testify about what "our" means in a 24 letter that he wrote concerning a purported 25 agreement which he contends is at the heart</p>	<p>1 Mint and the Langbords or just the Langbords? 2 MR. TIRSCHWELL: I object and 3 instruct him not to answer as to what he 4 intended the - - I will allow him to answer 5 as to what understanding he believed there 6 was, based on the conversations. 7 MR. SWEET: Well, he's already 8 testified what understanding he believed 9 there was and our clients have a different 10 understanding. 11 What we're trying to do in this 12 litigation is try to understand where the 13 parties sit and whether there was an 14 understanding, whose interpretation is 15 correct. These are issues that go to the 16 heart of the case, Eric. 17 And this is a letter written by Mr. 18 Berke, which he contends is an important 19 letter reflecting an understanding reserving 20 his clients' rights, and you're not letting 21 him testify about who "our" refers to? 22 MR. TIRSCHWELL: Why don't you ask 23 him what the basis of - - of the statement 24 is? 25 And he'll explain.</p>

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<p>1 MR. SWEET: What? What is the</p> <p>2 suggestion?</p> <p>3 MR. TIRSCHWELL: What the basis of</p> <p>4 the statement was -- is -- was?</p> <p>5 What's the basis of the statement,</p> <p>6 based on our understanding that the</p> <p>7 government will defend?</p> <p>8 He can tell you about the basis, you</p> <p>9 know, based on his conversations with the</p> <p>10 government. But that's different than asking</p> <p>11 him what he was intending to convey.</p> <p>12 MR. SWEET: Does this -- I'll ask</p> <p>13 you a different way.</p> <p>14 BY MR. SWEET: (Continued)</p> <p>15 Q. Does the word "our" in this letter,</p> <p>16 in the second sentence, mean the Mint and the</p> <p>17 Langbords or does it mean just the Langbords?</p> <p>18 MR. TIRSCHWELL: That's the same</p> <p>19 problem.</p> <p>20 Same objection; same instruction;</p> <p>21 with the same explanation, that you can ask</p> <p>22 him whether, based on the conversations, he</p> <p>23 understood there to be an understanding with</p> <p>24 the government and whether --</p> <p>25 MR. SWEET: You're asking again --</p>	<p>1 lawyer who, for forty-five minutes, had</p> <p>2 criticized two lawyers from the Mint. I just</p> <p>3 think that it's hypocritical for you to --</p> <p>4 MR. TIRSCHWELL: We wrote --</p> <p>5 MR. SWEET: To the ultimate extent,</p> <p>6 to question someone about what they meant by</p> <p>7 the use of their word and now you're not</p> <p>8 allowing me asking to get your own witness,</p> <p>9 who the wrote letter, to testify about the</p> <p>10 word "our."</p> <p>11 That's so hypocritical and you should</p> <p>12 be ashamed of yourself.</p> <p>13 MR. TIRSCHWELL: If you want --</p> <p>14 MR. SWEET: Do you want to a break</p> <p>15 and reconsider this?</p> <p>16 MR. TIRSCHWELL: No.</p> <p>17 But if you want, you can end the</p> <p>18 deposition --</p> <p>19 MR. SWEET: You can do whatever you</p> <p>20 want to do.</p> <p>21 MR. TIRSCHWELL: If you're just going</p> <p>22 to insult me.</p> <p>23 MR. SWEET: Eric, it's insulting to</p> <p>24 have a lawyer take two lawyers from the Mint,</p> <p>25 take their depositions and spend a lot of</p>
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<p>1 you're suggesting now that I can ask him</p> <p>2 about his understanding and what I'm asking</p> <p>3 is --</p> <p>4 MR. TIRSCHWELL: Based on -- you can</p> <p>5 ask him his understanding -- you can ask him</p> <p>6 what the basis -- you can ask him whether --</p> <p>7 -- you can ask him what he understood, as that</p> <p>8 understanding derives from the conversations</p> <p>9 he had with the government. I think we've</p> <p>10 been clear about that.</p> <p>11 MR. SWEET: That's --</p> <p>12 MR. TIRSCHWELL: That's --</p> <p>13 MR. SWEET: That's as unclear as I've</p> <p>14 ever heard.</p> <p>15 MR. TIRSCHWELL: You can ask him what</p> <p>16 understanding he had, based on his</p> <p>17 conversations with the government, about an</p> <p>18 agreement or an understanding, or whatever</p> <p>19 you want to call it. That's what I'm saying.</p> <p>20 But I'm not letting him answer as to</p> <p>21 his thought process in choosing to use words</p> <p>22 in this letter.</p> <p>23 MR. SWEET: Okay.</p> <p>24 For the record, that's the most</p> <p>25 hypocritical thing I've ever heard from a</p>	<p>1 time over their understanding of the word</p> <p>2 "their," in Mr. Berke's letter, and not allow</p> <p>3 me to ask Mr. Berke about the word "our" in</p> <p>4 his own letter.</p> <p>5 MR. TIRSCHWELL: I don't even see the</p> <p>6 word "their."</p> <p>7 MR. SWEET: You don't remember the</p> <p>8 forty-five minutes we spent on that either,</p> <p>9 last week?</p> <p>10 BY MR. SWEET: (Continued)</p> <p>11 Q. There was no understanding with the</p> <p>12 government, was there, Mr. Berke, concerning -- do</p> <p>13 you admit now, Mr. Berke, based upon the -- at</p> <p>14 this time, today, do you believe there was an</p> <p>15 understanding with the government, meeting of the</p> <p>16 minds, concerning the limitations, any limitations,</p> <p>17 on the transfer of the Double Eagles?</p> <p>18 A. Yes.</p> <p>19 Q. You believed there was a meeting of</p> <p>20 the minds?</p> <p>21 A. Yes.</p> <p>22 Q. What's your basis for believing there</p> <p>23 was a meeting of the minds?</p> <p>24 A. The discussions that happened.</p> <p>25 Well, the discussions that happened,</p>

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1 that there was an agreement that we were going to  
2 discuss, possibly resolve the matter without  
3 litigation; that the Langbords would permit the  
4 government to take possession of the coins to test  
5 for authenticity while we discussed resolving the  
6 issue related to the coins to determine if we can  
7 reach an agreement; and that the Langbords were  
8 preserving all of their rights to the coins and  
9 nothing about the government's testing of the coins  
10 or taking possession of the coins, during the  
11 discussions was in any way a waiver of their  
12 rights.

13 Q. Okay. Is it your contention that Mr.  
14 Shaver and Mr. Weinman misled you?

15 MR. TIRSCHWELL: About what?

16 BY MR. SWEET: (Continued)

17 Q. About anything?

18 A. Your question is: As I sit here  
19 today, do I believe that I was misled by the  
20 government?

21 Q. No, by Mr. Shaver or Mr. Weinman.

22 A. By Mr. Shaver and Mr. Weinman?

23 MR. TIRSCHWELL: To the extent you  
24 can answer that question without getting into  
25 your analysis and thought process about the

1 MR. SWEET: Back on the record.

2 MR. TIRSCHWELL: I've had the  
3 opportunity to confer with Mr. Berke and we  
4 do not believe -- I do not believe that  
5 there is a way to answer the question of  
6 whether Mr. Berke thinks he was misled by Mr.  
7 Shaver or Mr. Weinman or anyone from the  
8 government without revealing his thoughts,  
9 analysis and consideration of everything  
10 that's transpired in this case.

11 So, I don't believe -- I'm  
12 instructing him not to answer.

13 I don't believe it's possible for him  
14 to answer that without getting into what is  
15 protected thought process.

16 EXAMINATION (Continued)

17 BY MR. SWEET:

18 Q. You've never represented in any  
19 letter to the government, in connection with the  
20 1933 Double Eagles, that Mr. Shaver has misled you,  
21 have you?

22 A. I think my letters speak for  
23 themselves.

24 And I would reference the letter that  
25 you had asked me about earlier that referred to our

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1 legal issues in the case, just based on the  
2 communications and what transpired.

3 THE WITNESS: Well, I'm not sure the  
4 two can be separated.

5 I would like to consult.

6 MR. SWEET: While you're consulting,  
7 we'll go off the record and we'll mark the  
8 time, please.

9 Give some thought, please, to whether  
10 the position that you've taken in this  
11 deposition with regard to what is acceptable  
12 question is consistent with your objection to  
13 Mr. Berke testifying about the word "our" in  
14 his very own --

15 MR. TIRSCHWELL: Well, I'm reminded,  
16 just that my question to these --

17 MR. SWEET: Just consult. I don't  
18 want to argue on the record. It costs money.

19 MR. TIRSCHWELL: I thought we're off  
20 the record?

21 MR. SWEET: No, we're still going.

22 MR. TIRSCHWELL: Let's go off the  
23 record.

24 (Recess: 3:16 p.m.)

25 (Resumed: 3:18 p.m.)

1 prior dealings.

2 Q. Okay. Same question with regard to  
3 Mr. Weinman.

4 Have you ever written in any letter  
5 to the United States, in connection with this case,  
6 that you were misled by Mr. Weinman?

7 A. Again, I would refer to the letter  
8 that I did write in response to a letter that was  
9 signed by Mr. Shaver about how I characterized our  
10 prior dealings.

11 Q. Okay. That would be it; right?  
12 If it's in that letter, it's in that  
13 letter, otherwise you never did?

14 A. I never did what, make sure I know  
15 what you're asking?

16 Q. Communicate in writing your belief  
17 that Mr. Weinman or Mr. Shaver had misled you?

18 A. I want to make sure we're saying the  
19 same thing.

20 I believe I did communicate that I  
21 thought their characterization of our prior  
22 discussions was at odds with those discussions. I  
23 believe I communicated that in a variety of  
24 letters.

25 Q. That's something else.

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<p>1 I'm asking if you ever communicated</p> <p>2 in writing that either of these gentlemen, sitting</p> <p>3 to my left, misled you in connection with the</p> <p>4 entire 1933 Double Eagles?</p> <p>5 MR. TIRSCHWELL: Object to the form</p> <p>6 of the question.</p> <p>7 THE WITNESS: I didn't - - I don't</p> <p>8 believe I used the word "misled," but I also</p> <p>9 don't want to be in a position of giving a</p> <p>10 blanket characterization of my letters.</p> <p>11 There are quite a number of letters</p> <p>12 in the record. I think they do speak for</p> <p>13 themselves, in terms of my - - in terms of</p> <p>14 the concerns I expressed in those letters,</p> <p>15 that the prior discussions I had with the</p> <p>16 government were not being accurately</p> <p>17 characterized, the letter I was receiving</p> <p>18 from the government.</p> <p>19 BY MR. SWEET: (Continued)</p> <p>20 Q. I'm asking you something else.</p> <p>21 In any letter, in any correspondence</p> <p>22 that you've created in this case, that you've sent</p> <p>23 to the United States, have you ever said that Mr.</p> <p>24 Shaver or Mr. Weinman misled you or fraudulently</p> <p>25 induced you or pulled the wool over your eyes or</p>	<p>1 Q. Okay. You still have the right to</p> <p>2 bring claims and litigation; you never lost that</p> <p>3 right.</p> <p>4 MR. TIRSCHWELL: Objection.</p> <p>5 THE WITNESS: No.</p> <p>6 The agreement, to make - - let me</p> <p>7 just read it.</p> <p>8 "This agreement to make available the</p> <p>9 coins as described above is without prejudice</p> <p>10 to all my clients' rights and remedies</p> <p>11 existing at law, in equity or otherwise. We</p> <p>12 specifically reserve all rights and remedies</p> <p>13 with respect to the coins."</p> <p>14 Q. What remedies were you referring to?</p> <p>15 A. Referring to - -</p> <p>16 MR. TIRSCHWELL: Whoa, whoa, whoa.</p> <p>17 MR. SWEET: You're not going to let</p> <p>18 him say what remedies he's referring to?</p> <p>19 MR. TIRSCHWELL: I don't see how he</p> <p>20 can describe what remedies at the time, as a</p> <p>21 lawyer, he thought were available, without</p> <p>22 revealing his mental thoughts and process.</p> <p>23 You can ask him a different question.</p> <p>24 MR. SWEET: Are you instructing him</p> <p>25 not to answer that question?</p>
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<p>1 something - - or something other, some other</p> <p>2 statement, some other characterization in the same</p> <p>3 tone, into surrendering the 1933 Double Eagles?</p> <p>4 A. I think my letters, which I know you</p> <p>5 have, express my concerns that the government's</p> <p>6 actions were inconsistent with our prior</p> <p>7 discussions related to those coins.</p> <p>8 And I don't want to be in a position</p> <p>9 of characterizing each of those letters or what has</p> <p>10 happened since. But I think those letters speak</p> <p>11 for themselves.</p> <p>12 Q. In your letter, in Berke 4, which is</p> <p>13 your September 21st letter, it says, bottom line of</p> <p>14 the first paragraph, "while we discuss a possible</p> <p>15 resolution of the issues representing to the</p> <p>16 coins." You don't say in this letter anywhere that</p> <p>17 if there is no resolution there would be some form</p> <p>18 of litigation, do you?</p> <p>19 A. I don't use those words in that</p> <p>20 letter, but I do make clear, as you know in the</p> <p>21 next paragraph, that all - - this was "without</p> <p>22 prejudice to all my clients' rights and remedies</p> <p>23 existing at law, in equity, or otherwise," which I</p> <p>24 understand is understood to mean rights to bring</p> <p>25 claims in a litigation.</p>	<p>1 MR. TIRSCHWELL: As phrased, yes.</p> <p>2 BY MR. SWEET: (Continued)</p> <p>3 Q. You used the words "rights and</p> <p>4 remedies." Each of those words is the plural;</p> <p>5 correct?</p> <p>6 A. "Rights and remedies existing at law,</p> <p>7 in equity, or otherwise," "rights and remedies with</p> <p>8 respect to the coins."</p> <p>9 Q. So it's clear from this letter that</p> <p>10 there were more than - - there was more than one</p> <p>11 potential right and more than one potential remedy;</p> <p>12 correct?</p> <p>13 A. I think this letter is clear.</p> <p>14 Q. Oh, obviously not. Because we're</p> <p>15 here.</p> <p>16 A. I think this letter is clear that it</p> <p>17 is reserving every right and every remedy that the</p> <p>18 Langbords had and could possibly have as to the</p> <p>19 1933 Double Eagle coins.</p> <p>20 Q. Has anybody threatened you with a</p> <p>21 malpractice suit - -</p> <p>22 A. No.</p> <p>23 Q. In connection with this case?</p> <p>24 MR. TIRSCHWELL: Objection.</p> <p>25 MR. SWEET: That's a fact question.</p>

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<p>1 MR. TIRSCHWELL: Anyone threaten you</p> <p>2 with a malpractice suit what basis do you</p> <p>3 have to ask that question?</p> <p>4 MR. SWEET: I just read the letter.</p> <p>5 MR. TIRSCHWELL: I'm not following.</p> <p>6 BY MR. SWEET: (Continued)</p> <p>7 Q. Okay. When you talk about resolution</p> <p>8 of the issues relating to the coins, what issues</p> <p>9 are you referring to?</p> <p>10 A. The issues that were litigated in the</p> <p>11 Fenton litigation.</p> <p>12 Q. And did you discuss all those issues</p> <p>13 with the folks from the Mint?</p> <p>14 A. Discuss the possible resolution of</p> <p>15 the issues related to the coins, those are the</p> <p>16 issues. Are we going to have a settlement of the</p> <p>17 litigation and resolve the issues as was done in</p> <p>18 the prior time we had a '33 Double Eagle or are we</p> <p>19 going to litigate. That's what it refers to.</p> <p>20 Q. And there was no specific discussion</p> <p>21 with anybody from the Mint about the nature of the</p> <p>22 litigation, was there?</p> <p>23 A. (No Response.)</p> <p>24 Q. Well, that's not in this letter.</p> <p>25 Is that in any other letter - -</p>	<p>1 THE WITNESS: The condition is the</p> <p>2 language, we're only making the coins</p> <p>3 available to the government for the purposes</p> <p>4 of testing them for authenticity and securing</p> <p>5 them while we discuss a possible resolution</p> <p>6 of the issues related to the coins, while</p> <p>7 expressly and clearly doing so without</p> <p>8 prejudice to the Langbords' rights and</p> <p>9 remedies existing in law, or equity, or</p> <p>10 otherwise, and specifically with respect to</p> <p>11 the coins.</p> <p>12 BY MR. SWEET: (Continued)</p> <p>13 Q. You just testified the letter said</p> <p>14 "only."</p> <p>15 Where is the word "only"?</p> <p>16 A. I don't understand your question.</p> <p>17 MR. SWEET: Go back and read his last</p> <p>18 answer from the beginning.</p> <p>19 (The requested material was read</p> <p>20 aloud.)</p> <p>21 MR. SWEET: That's enough.</p> <p>22 Q. We just had the question, your answer</p> <p>23 read back and your describing a letter, where you</p> <p>24 said "only," turning them over only for</p> <p>25 authentication.</p>
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<p>1 MR. TIRSCHWELL: Objection.</p> <p>2 Q. Prior to the transfer?</p> <p>3 MR. TIRSCHWELL: Objection to the</p> <p>4 form.</p> <p>5 THE WITNESS: I believe there was</p> <p>6 extensive questions and I believe I answered</p> <p>7 that question.</p> <p>8 Q. You never discussed with anybody from</p> <p>9 the Mint the consideration of a bailment agreement,</p> <p>10 did you, with respect to the Double Eagles, did</p> <p>11 you?</p> <p>12 A. No.</p> <p>13 Q. With regard to Berke 4, are there any</p> <p>14 explicit conditions described here concerning the</p> <p>15 surrender?</p> <p>16 MR. TIRSCHWELL: Objection to the</p> <p>17 form of that.</p> <p>18 MR. SWEET: I'm sorry?</p> <p>19 MR. TIRSCHWELL: I object to the</p> <p>20 form.</p> <p>21 I don't understand the question.</p> <p>22 MR. SWEET: The format you object to?</p> <p>23 MR. TIRSCHWELL: Yeah. It's - - I</p> <p>24 object to the format. I don't understand</p> <p>25 what you're asking.</p>	<p>1 But the word "only" isn't this</p> <p>2 letter, is there?</p> <p>3 A. That's what the letter says.</p> <p>4 Q. Where does did say only?</p> <p>5 A. That is what the first paragraph and</p> <p>6 second paragraph of the letter says, it says on</p> <p>7 what basis the coins are being turned over. It's</p> <p>8 very explicit and clear.</p> <p>9 Q. But the word "only" is not in the</p> <p>10 letter, is it?</p> <p>11 A. You're asking if the word "only" is</p> <p>12 in the letter?</p> <p>13 I can look to see if the word "only"</p> <p>14 is in the letter.</p> <p>15 Q. Can you take a look?</p> <p>16 (Witness reviews the exhibit.)</p> <p>17 A. The words "only" is not in the</p> <p>18 letter.</p> <p>19 Q. The transfer occurred on the 22nd of</p> <p>20 September; right?</p> <p>21 A. Yes.</p> <p>22 Q. How did the date come to be agreed</p> <p>23 to?</p> <p>24 A. (No response.)</p> <p>25 MR. SWEET: I'll ask it a different</p>

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<p>1 way.</p> <p>2 BY MR. SWEET: (Continued)</p> <p>3 Q. Do you know why it occurred on the</p> <p>4 22nd of September?</p> <p>5 A. I recall a discussion with the Mint</p> <p>6 regarding a mutually convenient date and I believe</p> <p>7 that was a mutually convenient date.</p> <p>8 Q. Was it convenient to the lawyers and</p> <p>9 the Secret Service and Mr. Langbord?</p> <p>10 A. That's my recollection.</p> <p>11 Q. The location of the surrender was the</p> <p>12 bank where they were being held; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And how was it determined that the</p> <p>15 surrender would occur at the bank?</p> <p>16 MR. TIRSCHWELL: Objection to the</p> <p>17 form of the question.</p> <p>18 And we don't agree to the term</p> <p>19 "surrender," for the record.</p> <p>20 THE WITNESS: There was a discussion</p> <p>21 between myself and the government and we</p> <p>22 reached an agreement that the transfer would</p> <p>23 occur at the bank where they were being held.</p> <p>24 BY MR. SWEET: (Continued)</p> <p>25 Q. So, it's a mutual agreement to - -</p>	<p>1 day; and I recall receiving confirmation that they</p> <p>2 received it.</p> <p>3 I recall a brief discussion about who</p> <p>4 would be there for the Secret Service and then I</p> <p>5 just recall, you know, pleasantries.</p> <p>6 Q. Anything else?</p> <p>7 A. That's what I recall.</p> <p>8 Q. And this meeting was with you. Was</p> <p>9 Mr. Langbord there?</p> <p>10 A. Yes.</p> <p>11 Q. And Mr. Shaver and Mr. Weinman?</p> <p>12 A. That's my recollection.</p> <p>13 Q. And that's it?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay.</p> <p>16 A. What I don't recall is, there was</p> <p>17 somebody there from the Mint to - - with an</p> <p>18 expertise in handling the coins and I don't recall</p> <p>19 what point, whether they were at the bank, whether</p> <p>20 they came to the Starbucks at some point. That's</p> <p>21 one point I don't recall.</p> <p>22 Q. Do you recall if you gave them</p> <p>23 another copy of the letter?</p> <p>24 A. I recall explicitly a discussion, I</p> <p>25 wanted to make sure they received it, and I recall</p>
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<p>1 for this transaction to take place at the bank?</p> <p>2 A. We reached that agreement; yes.</p> <p>3 Q. How was it determined who would</p> <p>4 attend?</p> <p>5 A. Well, I think the government</p> <p>6 determined who would attend on their end and I</p> <p>7 believe we determined who would attend on our end.</p> <p>8 Q. So, any party can decide who they</p> <p>9 wanted, was able to decide who they wanted to</p> <p>10 attend?</p> <p>11 A. I think in this instance, I recall</p> <p>12 that the government - - I don't recall having a</p> <p>13 discussion where I expressed a view to the</p> <p>14 government who they should have attend, nor did I</p> <p>15 have a discussion with the government about who</p> <p>16 they thought we should have in attendance.</p> <p>17 Q. There was a meeting that morning, the</p> <p>18 22nd, at Starbucks; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Can you describe everything that</p> <p>21 happened at that meeting?</p> <p>22 A. I recall being at the Starbucks; I</p> <p>23 recall us having coffee; I recall - - I recall</p> <p>24 asking Mr. Shaver and Mr. Weinman to confirm and</p> <p>25 make sure they received my letter from the prior</p>	<p>1 them saying they did.</p> <p>2 As I sit here now, I don't recall</p> <p>3 anything about a copy or not.</p> <p>4 Q. Do you recall who said that they did;</p> <p>5 was it Mr. Shaver or Mr. Weinman?</p> <p>6 A. I recall receiving the confirmation.</p> <p>7 I can't say whether it was both, one or the other.</p> <p>8 I recall receiving it from some combination of</p> <p>9 them.</p> <p>10 And I recall, as I say, I recall all</p> <p>11 being together. I recall sitting at a small table,</p> <p>12 a small Starbucks' table.</p> <p>13 Q. Do you recall, Mr. Berke, was there</p> <p>14 any discussion on this particular day, any time</p> <p>15 during that day, not just in the Starbucks, about</p> <p>16 the commencement of a forfeiture action?</p> <p>17 A. I don't recall any such discussions.</p> <p>18 Q. Was there any discussion during this</p> <p>19 day concerning the potential of a negotiated</p> <p>20 settlement?</p> <p>21 A. I don't recall, one way or the other,</p> <p>22 if it did come up, you know, initially with Mr.</p> <p>23 Langbord there. We did have a very brief</p> <p>24 discussion. I don't recall whether or not that</p> <p>25 came up in that part of the discussion.</p>

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<p>1 And at the very end, there was a</p> <p>2 discussion, again, without the Secret Service. I</p> <p>3 don't recall whether it came up during that</p> <p>4 discussion.</p> <p>5 Q. To the extent that at any time until</p> <p>6 the day of the transfer did you believe - - to the</p> <p>7 extent that you believe Mr. Shaver or Mr. Weinman</p> <p>8 has mischaracterized events, what events do you</p> <p>9 contend they mischaracterized?</p> <p>10 A. I'm not comfortable being in a</p> <p>11 position to characterize their letters that I</p> <p>12 responded to in my letter. I think the letters</p> <p>13 speak for themselves.</p> <p>14 But the characterization refers to</p> <p>15 our dealings prior to the September 22nd date, as</p> <p>16 well as, I believe, characterizations following</p> <p>17 that date.</p> <p>18 Q. To what issue do those or issues do</p> <p>19 those mischaracterizations - - purported</p> <p>20 mischaracterizations relate?</p> <p>21 A. Again, I'm not comfortable</p> <p>22 characterizing the lengthy letters. They are in</p> <p>23 the record. I'll be happy to confirm the letter</p> <p>24 that I sent. But I think the letters speak for</p> <p>25 themselves.</p>	<p>1 States Mint coerced some conduct by the Langbords?</p> <p>2 A. If there was a condition precedent</p> <p>3 set for having discussions about resolving the</p> <p>4 matter without litigation, without doing this, we</p> <p>5 would have gone directly to litigation.</p> <p>6 I believe those were the issues.</p> <p>7 Q. And by "this," you're referring to</p> <p>8 what, "this"?</p> <p>9 A. The agreement to allow them to take</p> <p>10 possession of the coins and test them for</p> <p>11 authenticity, while we discussed whether or not</p> <p>12 we're going to reach a resolution.</p> <p>13 Q. You claim that the transfer was a</p> <p>14 condition precedent to a discussion about a</p> <p>15 possible resolution?</p> <p>16 A. That agreeing to have a settlement</p> <p>17 without litigation, that's correct.</p> <p>18 Q. Was that condition precedent</p> <p>19 reflected expressly anywhere in correspondence?</p> <p>20 A. I believe in my letter.</p> <p>21 I should say, I'm pointing to the</p> <p>22 September 21st letter.</p> <p>23 Q. That's the best evidence you have of</p> <p>24 the consideration of a condition precedent?</p> <p>25 A. You asked.</p>
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<p>1 Q. Do you have - - you're a deponent and</p> <p>2 I'm asking you, letters aside, I'm asking you what</p> <p>3 you recall factually and what you contend they</p> <p>4 mischaracterized?</p> <p>5 A. I believe I have already described</p> <p>6 the - - the events and I think my letters are</p> <p>7 explicit in terms of the issue I raise regarding</p> <p>8 the characterization in their letters, through</p> <p>9 letters that were exchanged.</p> <p>10 So, I'm not comfortable generalizing</p> <p>11 about what the letters say or didn't say. I think</p> <p>12 they are very explicit and they cover a lot of</p> <p>13 topics.</p> <p>14 MR. SWEET: Okay; we'll go through</p> <p>15 all of them.</p> <p>16 BY MR. SWEET: (Continued)</p> <p>17 Q. The activities of September 22nd,</p> <p>18 2004, were voluntary; correct?</p> <p>19 A. (No response.)</p> <p>20 Q. The transfer of the Double Eagles?</p> <p>21 MR. TIRSCHWELL: Objection.</p> <p>22 That calls for a legal conclusion.</p> <p>23 Q. As a factual matter, was there</p> <p>24 anything coercive in connection with the transfer</p> <p>25 of the Double Eagles, anything in which the United</p>	<p>1 MR. TIRSCHWELL: Objection to the</p> <p>2 form of the question.</p> <p>3 BY MR. SWEET: (Continued)</p> <p>4 Q. I'm asking you, is that the best</p> <p>5 evidence?</p> <p>6 A. You asked.</p> <p>7 I testified at length about our</p> <p>8 discussions and you asked if there was a written</p> <p>9 document and that's the written - - that is the</p> <p>10 written document I'm referring you to.</p> <p>11 Q. So, when you said that the transfer</p> <p>12 was a condition precedent, otherwise the Plaintiffs</p> <p>13 would have gone directly to litigation?</p> <p>14 A. No.</p> <p>15 Q. Do I have that straight?</p> <p>16 A. No.</p> <p>17 Otherwise we would not have had an</p> <p>18 agreement and the government would have had to take</p> <p>19 whatever action it was going to take vis-a-vis the</p> <p>20 courts.</p> <p>21 Q. You would not have transferred them;</p> <p>22 is that what I'm understanding, that the Langbords</p> <p>23 would not have transferred possession to the United</p> <p>24 States if they - - if they knew that the</p> <p>25 negotiations would not have resulted in a</p>

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<p>1 settlement?</p> <p>2 A. No. I'm saying something different.</p> <p>3 Absent an agreement, that we were</p> <p>4 going to have discussions about a settlement to</p> <p>5 avoid litigation, there would have been litigation.</p> <p>6 I would have required the government to file a</p> <p>7 claim against the '33 Double Eagles and then the</p> <p>8 Langbords would have had to file a notice of claim</p> <p>9 as to the coins.</p> <p>10 Q. That's how you saw it playing out?</p> <p>11 A. I'm not going to.</p> <p>12 Q. You've already testified to it?</p> <p>13 A. No.</p> <p>14 MR. TIRSCHWELL: He testified --</p> <p>15 THE WITNESS: I'm testifying as to a</p> <p>16 discussion we had with the government.</p> <p>17 Q. So, I want to make sure I'm clear</p> <p>18 that the surrender or transfer of the Double Eagles</p> <p>19 to the possession of the government, you contend</p> <p>20 was a condition precedent to a negotiation, but it</p> <p>21 wasn't coerced, was it?</p> <p>22 MR. TIRSCHWELL: Objection to the</p> <p>23 form of the question.</p> <p>24 "Coercion" is a legal term.</p> <p>25 MR. SWEET: Well, you want a</p>	<p>1 transferred for authentication purposes only and</p> <p>2 then there would be one of two results.</p> <p>3 Do I have that correct?</p> <p>4 MR. TIRSCHWELL: I object to the form</p> <p>5 of the question, as to what he contends.</p> <p>6 You can ask him what he understood.</p> <p>7 BY MR. SWEET: (Continued)</p> <p>8 Q. Your testimony is that the Double</p> <p>9 Eagles were transferred to the possession of the</p> <p>10 United States for purposes of having the Double</p> <p>11 Eagles authenticated and then there would be either</p> <p>12 a settlement or there would be litigation.</p> <p>13 Do I have that right?</p> <p>14 A. Correct.</p> <p>15 Q. Were there any other agreements</p> <p>16 between the United States and the Langbords as of</p> <p>17 the day of the transfer?</p> <p>18 A. I have to consult with counsel for</p> <p>19 one thing.</p> <p>20 MR. SWEET: Sure.</p> <p>21 (Recess: 3:47 p.m.)</p> <p>22 (Resumed: 3:49 p.m.)</p> <p>23 THE WITNESS: I'm sorry. Can I have</p> <p>24 the question read back?</p> <p>25 MR. SWEET: Do you want me to ask it</p>
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<p>1 definition of coerced?</p> <p>2 MR. TIRSCHWELL: Do you want to ask a</p> <p>3 more specific question?</p> <p>4 MR. SWEET: Are you voluntary, as</p> <p>5 well.</p> <p>6 MR. TIRSCHWELL: "Did anyone threaten</p> <p>7 you," he can probably answer that.</p> <p>8 BY MR. SWEET: (Continued)</p> <p>9 Q. Was there a threat -- did the</p> <p>10 Langbords surrender the Double Eagles as a result</p> <p>11 of a threat by the government?</p> <p>12 A. I don't believe they surrendered the</p> <p>13 coins.</p> <p>14 Q. Did they transfer possession of the</p> <p>15 Double Eagle -- did they transfer possession of</p> <p>16 the Double Eagles as that was a result of a threat</p> <p>17 by the government?</p> <p>18 A. The threat, the only threat, is a</p> <p>19 threat of litigation, absent an agreement. Other</p> <p>20 than the threat of the filing, the action against</p> <p>21 the coins and having the litigation, there were no</p> <p>22 other -- there are no threat made by the</p> <p>23 government.</p> <p>24 Q. Mr. Berke, you contend that there was</p> <p>25 an agreement that the Double Eagles would be</p>	<p>1 again?</p> <p>2 THE WITNESS: I just want to make</p> <p>3 sure -- either way.</p> <p>4 MR. SWEET: Let me ask it again.</p> <p>5 THE WITNESS: Okay.</p> <p>6 MR. SWEET: I think it would be</p> <p>7 easier.</p> <p>8 THE WITNESS: Yes.</p> <p>9 EXAMINATION (Continued)</p> <p>10 BY MR. SWEET:</p> <p>11 Q. Mr. Berke, I'm trying to -- you</p> <p>12 testified that there was an agreement between the</p> <p>13 United States and the Langbords concerning the</p> <p>14 transfer of the Double Eagles.</p> <p>15 You contend that the agreement was</p> <p>16 that they were being transferred solely for</p> <p>17 purposes of authentication, subject to another</p> <p>18 result.</p> <p>19 Correct?</p> <p>20 We got through that part already and</p> <p>21 you agreed.</p> <p>22 A. And the agreement that they were not</p> <p>23 -- that they were reserving all their rights.</p> <p>24 Q. Yes?</p> <p>25 A. And remedies and weren't in any way</p>

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<p>1 waiving any rights and remedies as we talked about.</p> <p>2 Q. Understood.</p> <p>3 A. Yes.</p> <p>4 Q. Were there any other agreements - -</p> <p>5 in your view, were there any other agreements</p> <p>6 besides the purported agreement that the transfer</p> <p>7 was for purposes of authentication only and that</p> <p>8 the Langbords reserved their rights and remedies?</p> <p>9 A. I don't necessarily agree with that</p> <p>10 characterization, but, I can say, other than what</p> <p>11 I've previously testified to.</p> <p>12 Q. No, I'm asking you.</p> <p>13 A. There were no other agreements.</p> <p>14 Q. When you say other than I previously</p> <p>15 testified to, that's almost three-and-a-half hours</p> <p>16 of testimony.</p> <p>17 I'm trying to identify what</p> <p>18 agreements existed between the Langbords and the</p> <p>19 government at the time of the transfer.</p> <p>20 And I think we've identified, you</p> <p>21 contend that one of the agreements was - - was the</p> <p>22 purported agreement that the transfer was only for</p> <p>23 purposes of authentication.</p> <p>24 And the second agreement you</p> <p>25 discussed is that the Langbords reserved their</p>	<p>1 else.</p> <p>2 Q. Okay. After the transfer on June - -</p> <p>3 in June - - in September of '04, there was,</p> <p>4 eventually, in June of '05, another meeting with</p> <p>5 Mr. Langbord - - Mr. Shaver and Mr. Weinman;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Between those two periods, those two</p> <p>9 times, okay, between September '04, and June '05,</p> <p>10 did you have any other discussions with the Mint?</p> <p>11 A. Yes.</p> <p>12 Q. Could you identify each discussion</p> <p>13 and tell us what happened?</p> <p>14 A. It's going to be hard for me to take</p> <p>15 it discussion by discussion.</p> <p>16 Q. Yes?</p> <p>17 A. I'll tell you I had multiple</p> <p>18 discussions by telephone with either Dan Shaver or</p> <p>19 Greg Weinman. My best recollection is the number</p> <p>20 would be somewhere between 6 and 10.</p> <p>21 And I recall my contacting - - I</p> <p>22 would typically contact Dan first. If he wasn't</p> <p>23 available, Greg, but not always, as we contacted</p> <p>24 them to find out the progress report on their</p> <p>25 attempts to authenticate the coins.</p>
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<p>1 rights and remedies - - all rights and remedies.</p> <p>2 Were there any other agreements</p> <p>3 between the parties, in your mind?</p> <p>4 A. Not necessarily accepting your</p> <p>5 characterization of my testimony about it, but</p> <p>6 those, those are the agreements that I would agree</p> <p>7 existed.</p> <p>8 Q. Were there any others that you can</p> <p>9 recall?</p> <p>10 A. No.</p> <p>11 Q. Did you discuss with the Mint or any</p> <p>12 third party whether the Langbords should simply put</p> <p>13 the 1933 Double Eagles up for sale rather than</p> <p>14 engage with the United States?</p> <p>15 MR. TIRSCHWELL: At any point?</p> <p>16 Are you talking about a particular</p> <p>17 time?</p> <p>18 BY MR. SWEET: (Continued)</p> <p>19 Q. Ever.</p> <p>20 A. Excluding any discussions I had with</p> <p>21 the Langbords or with attorneys working on the case</p> <p>22 with me - -</p> <p>23 Q. Yes?</p> <p>24 A. I did not have those, any such</p> <p>25 discussions with either the government or anyone</p>	<p>1 I recall discussions - - initially I</p> <p>2 recall Mr. Shaver raising that things were delayed</p> <p>3 because of the election and they were having</p> <p>4 difficulties having the availability of the Secret</p> <p>5 Service to transport the coins for the purpose of</p> <p>6 testing, because it was in, roughly, November.</p> <p>7 Q. Yes?</p> <p>8 A. I remember him being apologetic about</p> <p>9 that, saying they have no control over the Secret</p> <p>10 Service.</p> <p>11 Following that, I recall - - and I</p> <p>12 can't say this is the exact sequence - - I want to</p> <p>13 tell you generally the calls that I remember.</p> <p>14 I recall conversations with Mr.</p> <p>15 Shave, in which he said there were political</p> <p>16 disputes described as, essentially, turf battles,</p> <p>17 between the Mint and the Secret Service related to</p> <p>18 the coins and they were delaying moving the</p> <p>19 discussion further to authenticate and determine</p> <p>20 whether and what agreement they would be prepared</p> <p>21 to enter into.</p> <p>22 And my recollection is I had more</p> <p>23 than one conversation in which that issue was</p> <p>24 raised by Mr. Shaver.</p> <p>25 I recall having discussions with Mr.</p>

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<p>1 Weinman. in which Mr. Weinman, as Mr. Shaver was, 2 was apologetic about the delay. 3 I recall there was some optimism that 4 this would move more quickly and they understood 5 the frustration that it was taking so long. 6 I don't recall Mr. Weinman giving a 7 specific explanation for the delay, other than that 8 they wanted to get it done and were frustrated, 9 as well, that it hadn't gotten done. 10 I recall a period of time, after some 11 time had passed, where I was not getting a return 12 phone call for a number of weeks and that concerned 13 me, given that we had been discussing - - given our 14 discussions about to determine whether we can reach 15 an agreement. 16 I sent an e-mail to Mr. Weinman, 17 expressing my clients' concern about the amount of 18 time that had passed and that it had been a period 19 of time that they hadn't returned our calls. 20 And I recall shortly after that 21 e-mail Mr. Weinman calling, apologizing, saying 22 that it had nothing to do with our position as to 23 the coins; that there were - - that there were 24 other things that affected why they didn't get back 25 to me.</p>	<p>1 Q. It was after the transfer? 2 A. My recollection is it was after the 3 transfer and before the June meeting you 4 referenced. 5 Q. And you recall - - who do you recall 6 raising the concept of a finder's fee, using those 7 terms? 8 A. My best recollection is that was Mr. 9 Weinman, but I can't say it was Mr. Shaver, both of 10 them on the phone. 11 And my recollection of it - - I want 12 to be clear because I'm absolutely sure that the 13 notion didn't come up in the first two meetings, 14 and it's possible it came up in a phone call 15 immediately prior to the transfer, in those 16 conversations, two conversations that I remember, 17 although my best memory is it came up sometime 18 after the transfer. 19 But as I said, I'm unsure about the 20 date and I remember my response to be, "I'm sure my 21 clients aren't going to care how it's characterized 22 or described publicly, so long as - - so long as 23 the financial terms were acceptable to reach an 24 agreement." 25 Okay.</p>
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<p>1 I don't recall anything more specific 2 than that. 3 I recall, at some point towards the 4 end of the time frame you're talking about, that, I 5 believe it was Mr. Weinman, saying that they either 6 had authenticated the coins or were close to 7 authenticating the coins and that they would be in 8 a position to discuss whether or not we would be 9 reaching an agreement. 10 Between - - during one of those 11 calls, I recall, I believe it was Mr. Weinman, 12 although it could have been Mr. Shaver, saying, you 13 know, in their discussions among - - I can't place 14 this specifically in time - - but saying in 15 discussions among themselves, they thought that any 16 agreement to settle the dispute, they maybe - - at 17 a better time doing it, it was characterized as a 18 finder's fee. 19 Q. Is the first time the term "finder's 20 fee" came up? 21 A. When it came up in the telephone 22 conversation with the Mint - - and I just can't 23 place it in time as to when it came up - - but it 24 came after the initial meeting that we were talking 25 about.</p>	<p>1 I also - - well, let me just go 2 back, and I do recall that Mr. Shaver and Mr. 3 Weinman did express that it was important that the 4 fact of these coins and the fact of our discussions 5 not be made public while they go through their 6 internal processes, that that was also described 7 for me, which I had understood. And I believe that 8 was described for me prior to the transfer. 9 And I believe that came up again in 10 our discussions between the time of the transfer 11 and the June meeting you're talking about. 12 Q. Mr. Berke, did the delay from 13 September until getting the government's answer 14 about the authentication and its position in June 15 of '05, did it prejudice your clients in any way? 16 MR. TIRSCHWELL: Objection. 17 I'm instructing him not to answer. 18 BY MR. SWEET: (Continued) 19 Q. Was there injury to your client as a 20 result of that delay, on a factual basis? 21 MR. TIRSCHWELL: Objection. 22 I cannot let him answer that without 23 revealing communications with his client or 24 his thought processes about how their legal 25 rights might be impaired.</p>

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<p>1 MR. SWEET: So, you're not going to</p> <p>2 let him testify about whether that's part of</p> <p>3 the claim or not, this delay?</p> <p>4 MR. TIRSCHWELL: That's correct.</p> <p>5 This is not the forum to explore the</p> <p>6 nature of your claims; it's the forum to</p> <p>7 explore facts about the interactions between</p> <p>8 Mr. Berke and the government.</p> <p>9 BY MR. SWEET: (Continued)</p> <p>10 Q. Okay. It's a fact, was your - - was</p> <p>11 the delay something that adversely affected you and</p> <p>12 your client?</p> <p>13 MR. TIRSCHWELL: Objection.</p> <p>14 I'm instructing him not to answer for</p> <p>15 the same reasons.</p> <p>16 Q. Anything else you remember from those</p> <p>17 telephone conversations?</p> <p>18 A. So, to finish the description of what</p> <p>19 I recall, I recall, shortly prior to the meeting,</p> <p>20 getting a call - - again, I believe it was from Mr.</p> <p>21 Weinman - - saying that either they had</p> <p>22 authenticated the coins or were about to</p> <p>23 authenticate the coins and they felt they were</p> <p>24 moving closer to being able to discuss the</p> <p>25 potential agreement.</p>	<p>1 the meeting in June.</p> <p>2 Q. Okay. You don't recall the day in</p> <p>3 June, do you?</p> <p>4 A. I'm sure it's - - it's recorded</p> <p>5 somewhere. I just don't have it on my mind.</p> <p>6 Q. Okay. During - - from September to</p> <p>7 June, did you have any discussions with the Mint</p> <p>8 concerning the substance of an agreement to resolve</p> <p>9 the dispute?</p> <p>10 A. I'm sorry, your time frame again was?</p> <p>11 Q. September 22nd to the meeting in</p> <p>12 June.</p> <p>13 MR. TIRSCHWELL: Did he have any</p> <p>14 what?</p> <p>15 I'm sorry, I didn't hear it.</p> <p>16 THE WITNESS: Subsequent discussions</p> <p>17 discussing the terms of the resolution?</p> <p>18 Q. Yes.</p> <p>19 A. I remember, because I mentioned it,</p> <p>20 whether it's going to be characterized as a</p> <p>21 finder's fee or an agreement. I do recall that in</p> <p>22 conversations the - - I recall having a discussion,</p> <p>23 again, similar to what was had at the initial</p> <p>24 meeting, about the flexibility in reaching an</p> <p>25 agreement because of the number of coins, but I do</p>
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<p>1 I recall I had not heard from them</p> <p>2 for some period of time after that and I had a</p> <p>3 reason to go to Washington on another case and I</p> <p>4 recall calling them and saying, "I think I'm going</p> <p>5 to be in D.C. Are you guys in a position yet where</p> <p>6 you've authenticated the coins and are they</p> <p>7 prepared to talk about, you know, whether or not we</p> <p>8 can reach an agreement, avoid litigation?"</p> <p>9 My recollection is they said they</p> <p>10 were not prepared right at that moment and they</p> <p>11 needed a little more time.</p> <p>12 Then sometime shortly after that, we</p> <p>13 spoke - - and I don't recall whether I called them</p> <p>14 again or they called me back - - and, essentially,</p> <p>15 said, "We're prepared to have a discussion. Why</p> <p>16 don't you come down?"</p> <p>17 They did not tell me what their - -</p> <p>18 what their position, resolution was.</p> <p>19 I believe in that final call to come</p> <p>20 down, they said - - again, I can't say whether it</p> <p>21 was this call or the call immediately prior - - but</p> <p>22 that they had authenticated the coins.</p> <p>23 I knew that before I went down.</p> <p>24 And that's leading up to the - - and</p> <p>25 I believe those were the last conversations before</p>	<p>1 not recall a discussion where the Mint said, "We're</p> <p>2 prepared to do X or we're prepared to offer X." I</p> <p>3 don't recall any discussion of that sort.</p> <p>4 Q. When you talk about - - do you have</p> <p>5 some recollection of somebody mentioning the</p> <p>6 flexibility to do an agreement because of the</p> <p>7 number of coins or was that you specifying those</p> <p>8 terms to the Mint or was that somebody from the</p> <p>9 Mint speaking to you?</p> <p>10 A. My recollection is that, in talking</p> <p>11 about the Mint, to the Mint - - and, again, Mr.</p> <p>12 Shaver and Mr. Weinman were always very apologetic</p> <p>13 and always expressed that they were anxious to get</p> <p>14 them authenticated, resolve whatever internal</p> <p>15 issues they had and we can sit down and see if we</p> <p>16 can resolve the issues, I believe in that</p> <p>17 discussion it was me who would say, who did say,</p> <p>18 you know, we should talk to about it; you should</p> <p>19 give it more thought because we've thought about</p> <p>20 it; there are a lot of different ways to slice - -</p> <p>21 to think about resolving the issues, given the</p> <p>22 number of coins and the evaluation of the coins.</p> <p>23 Q. Neither Mr. Shaver nor Mr. Weinman</p> <p>24 committed to you in any way that there would be an</p> <p>25 agreement?</p>

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<p>1 A. No, they did not.</p> <p>2 Q. I want to go to a few documents.</p> <p>3 MR. SWEET: This will be Berke 5.</p> <p>4 (E-mails, 4 pages, so marked Berke</p> <p>5 Exhibit 5 for identification by counsel.)</p> <p>6 (Handed to the witness.)</p> <p>7 Q. You see at the top of it my name.</p> <p>8 That is because this is an e-mail that was</p> <p>9 forwarded to me by Mr. Weinman and I printed it.</p> <p>10 A. Huh-huh.</p> <p>11 Q. Except for my name, do you recognize</p> <p>12 the document?</p> <p>13 A. I don't.</p> <p>14 But I'm going to read it.</p> <p>15 Q. Take your time.</p> <p>16 Does this refresh your recollection</p> <p>17 about this document?</p> <p>18 A. I don't remember this document.</p> <p>19 Q. Do you have any doubt that it is an</p> <p>20 e-mail correspondence between you and Greg Weinman?</p> <p>21 A. I don't. I don't.</p> <p>22 Q. Okay. Starting at the top of the</p> <p>23 second page - -</p> <p>24 A. I'm sorry. Just let me finish it.</p> <p>25 (Witness reviews the exhibit.)</p>	<p>1 articulated. What are your thoughts?"</p> <p>2 And then you respond, when you say,</p> <p>3 "I generally agree."</p> <p>4 Then you say, "they mangled my</p> <p>5 statements."</p> <p>6 I see what you said.</p> <p>7 When you say you generally agree, you</p> <p>8 generally agree to those comments that - - correct?</p> <p>9 A. I'll be honest with you. Let me just</p> <p>10 say, I don't remember this at all. I just don't.</p> <p>11 I don't compute it was sent.</p> <p>12 I read "I generally agree." I don't</p> <p>13 know whether I'm referring to I personally thought</p> <p>14 the story was tight and generally well done or</p> <p>15 something else. I just don't recall seeing it.</p> <p>16 Q. Okay. Let's turn to the story</p> <p>17 itself, which is on the second page.</p> <p>18 A. (Witness complies.)</p> <p>19 Q. Do you see the fourth paragraph, it</p> <p>20 says, "Double Eagles were first minted"?</p> <p>21 Do you see that?</p> <p>22 A. Huh-huh.</p> <p>23 Q. And says - - do you want to read that</p> <p>24 second sentence of that paragraph?</p> <p>25 A. "The ones that were minted in 1933</p>
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<p>1 A. Okay.</p> <p>2 Q. Starting at the top of the second</p> <p>3 page, you can see - -</p> <p>4 A. Yes.</p> <p>5 Q. - - the e-mail starts by having Greg</p> <p>6 Weinman send to you an article from the A.P.?</p> <p>7 A. Yes.</p> <p>8 Q. Off the wire; right?</p> <p>9 A. Yup.</p> <p>10 Q. You go to the second page, we see</p> <p>11 that you respond to Mr. Weinman and you say,</p> <p>12 "Thanks, Greg. What do you guys think of the</p> <p>13 story?"</p> <p>14 And then Mr. Weinman responds to you,</p> <p>15 later on - -</p> <p>16 A. Huh-huh.</p> <p>17 Q. That same day, a few minutes later --</p> <p>18 A. Huh-huh.</p> <p>19 Q. "I haven't spoken to David or</p> <p>20 Henrietta, but I personally thought the story was</p> <p>21 tight and generally well done. One missing element</p> <p>22 was that this is the" - - capitalized word - -</p> <p>23 "Only 1993 GDE available for private ownership."</p> <p>24 A. Huh-huh.</p> <p>25 Q. "It's inferred, but never</p>	<p>1 were never put into circulation because President</p> <p>2 Franklin Roosevelt decided to take the nation off</p> <p>3 the gold standard."</p> <p>4 Q. Did you, at the time, agree with that</p> <p>5 statement?</p> <p>6 MR. TIRSCHWELL: Objection.</p> <p>7 I instructed him not to answer this.</p> <p>8 We're not here for this.</p> <p>9 MR. SWEET: You're instructing him</p> <p>10 not to answer?</p> <p>11 MR. TIRSCHWELL: That's correct.</p> <p>12 BY MR. SWEET: (Continued)</p> <p>13 Q. You did not, Mr. Berke, challenge</p> <p>14 that statement when you were referring back to Mr.</p> <p>15 Weinman, did you?</p> <p>16 There's nothing about - -</p> <p>17 MR. TIRSCHWELL: Objection.</p> <p>18 The e-mail speak for itself.</p> <p>19 I'm instructing him not to answer.</p> <p>20 BY MR. SWEET: (Continued)</p> <p>21 Q. You're not going to answer?</p> <p>22 MR. TIRSCHWELL: It has nothing to do</p> <p>23 with this case, absolutely nothing.</p> <p>24 MR. SWEET: It has nothing do with</p> <p>25 this case?</p>

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<p>1 MR. TIRSCHWELL: That's correct.</p> <p>2 As I said, he's here to testify about</p> <p>3 communications he had that are relevant to</p> <p>4 deciding the issues in this case.</p> <p>5 And to some extent, we don't even</p> <p>6 think they are relevant, but we're not going</p> <p>7 to talk about e-mails five years ago.</p> <p>8 MR. SWEET: Let's go to another one.</p> <p>9 MR. TIRSCHWELL: A different case and</p> <p>10 article.</p> <p>11 BY MR. SWEET: (Continued)</p> <p>12 Q. This is Berke 6.</p> <p>13 (E-mail, 4 pages, so marked Berke</p> <p>14 Exhibit 6 for identification by counsel.)</p> <p>15 (Handed to the witness.)</p> <p>16 Q. Same thing; take a minute.</p> <p>17 (Witness reviews the exhibit.)</p> <p>18 Q. Do you recall this transmission?</p> <p>19 A. Let me just take a look at it.</p> <p>20 Q. Sure.</p> <p>21 (Witness reviews the exhibit.)</p> <p>22 A. I recall giving some comments to</p> <p>23 things like this, particularly early on. I don't</p> <p>24 recall this specifically.</p> <p>25 Q. I'm going to represent that the</p>	<p>1 with litigation or for the parties?</p> <p>2 A. It is not for the litigation of the</p> <p>3 parties. One Q and A was not to give out to the</p> <p>4 public but was just for people to have, to consult,</p> <p>5 depending on the press inquiries, if my memory</p> <p>6 serves, and one would be actually published - -</p> <p>7 Q. Okay.</p> <p>8 A. On the web site and so forth.</p> <p>9 Q. You would consider them public</p> <p>10 documents though?</p> <p>11 A. I would consider them documents that</p> <p>12 were on the web site, that Q and A would have been</p> <p>13 on the web site, available to the public.</p> <p>14 Q. I understand.</p> <p>15 You say, "I think the changes" - -</p> <p>16 I'm reading the second sentence - - well, I'll read</p> <p>17 the text.</p> <p>18 "First, I attach a revised Q and A,</p> <p>19 with the changes highlighted for your review. I</p> <p>20 think the changes will minimize the controversy in</p> <p>21 numismatic circles."</p> <p>22 Do you see that part?</p> <p>23 A. Yes.</p> <p>24 Q. So, is it correct that you took an</p> <p>25 existing document and you made edits to it and then</p>
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<p>1 attachment, "The Frequently Asked Questions: 1933</p> <p>2 Double Eagle," is the attachment that's referenced</p> <p>3 to the e-mail itself.</p> <p>4 A. Okay.</p> <p>5 Q. Okay?</p> <p>6 This is an e-mail - - you have no</p> <p>7 doubt this is an e-mail from you to a number of</p> <p>8 people; correct?</p> <p>9 A. I have no basis to challenge it:</p> <p>10 that's correct.</p> <p>11 Q. Do you recall now what the Q and A</p> <p>12 was for, the purpose of the Q and A was?</p> <p>13 A. In my mind, I remember two instances</p> <p>14 when we talked about Q and A. It was a Q and A</p> <p>15 for, I believe, Sotheby's, but possibly the</p> <p>16 government, to deal with the press inquiry and then</p> <p>17 I recall a Q and A for the web site, for the Mint's</p> <p>18 web site, which may or may not have been cross</p> <p>19 referenced to the Sotheby's web site or the other</p> <p>20 way around, the Sotheby's web site cross referenced</p> <p>21 to the Mint.</p> <p>22 Looking at this, I don't know what</p> <p>23 this one is for.</p> <p>24 Q. But it would have been for public</p> <p>25 consumption as opposed to having anything to do</p>	<p>1 sent back the revised version, with either</p> <p>2 strikeouts and underlining or something of that</p> <p>3 nature?</p> <p>4 A. That's what the e-mail indicates.</p> <p>5 Q. Okay. Did you do this yourself or</p> <p>6 did somebody else do this, in your office?</p> <p>7 If it's not objectionable, I just</p> <p>8 want to know whether it's your work or someone</p> <p>9 else's work.</p> <p>10 A. I don't recall.</p> <p>11 Q. Let's turn to the second page.</p> <p>12 A. (Witness complies.)</p> <p>13 Q. Toward the bottom, there's some text</p> <p>14 that's underlined.</p> <p>15 Do you recall inserting that text</p> <p>16 into the answer?</p> <p>17 A. I don't.</p> <p>18 What I would like to see is what was</p> <p>19 taken out, which I don't know if there's a document</p> <p>20 that you have that shows what was the original</p> <p>21 document.</p> <p>22 Q. Look at the second page of the Q and</p> <p>23 A.</p> <p>24 Do you see where there's strikeouts?</p> <p>25 A. Yes.</p>

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<p>1 But what's not clear to me is, this</p> <p>2 is - - this isn't a - - this is a program that</p> <p>3 allows you to make changes in a document, then it</p> <p>4 automatically is reflected. I think it's more</p> <p>5 common and more accessible today than it was back</p> <p>6 then. I don't believe these changes are made on</p> <p>7 that program.</p> <p>8 So, I am reading this, I'm assuming -</p> <p>9 - I believe that this reflects changes that are</p> <p>10 added, but not necessarily the words that they</p> <p>11 replace, for example, in the first page on the Q</p> <p>12 and A.</p> <p>13 Q. If you look at the third page, you</p> <p>14 see where at the bottom there's a place where</p> <p>15 there's a strikeout and then, immediately following</p> <p>16 it, underlined text added in?</p> <p>17 A. Huh-huh.</p> <p>18 Q. Does that help you to recollect</p> <p>19 whether the language that's underlined on the first</p> <p>20 page of the Q and A is changes that you made?</p> <p>21 A. I'd be guessing.</p> <p>22 The one thing I do want to say is</p> <p>23 that I do know when I - - before the program that</p> <p>24 is now used became easiest to use, I would sometime</p> <p>25 mark changes and I know I would inconsistently put</p>	<p>1 A. (Witness complies.)</p> <p>2 Q. Where did that meeting take place?</p> <p>3 A. Dan Shaver's office, in the Mint.</p> <p>4 Q. And it was you, Greg and Dan?</p> <p>5 A. We're coming to - - yes.</p> <p>6 Q. You have nobody else?</p> <p>7 A. No.</p> <p>8 Q. Tell us everything you remember about</p> <p>9 that meeting.</p> <p>10 A. Okay.</p> <p>11 I remember walking in; I remember</p> <p>12 having a discussion about issues related to the</p> <p>13 coins.</p> <p>14 For example, I recall, as we were</p> <p>15 walking to Shaver's office, I recall him talking</p> <p>16 about a FOIAQ, F-O-I-A-Q, caps, that they had</p> <p>17 received about '33 Double Eagles that suggested - -</p> <p>18 that suggested to them that somebody may know</p> <p>19 something about our coins, but it was really just a</p> <p>20 speculation.</p> <p>21 Q. You mean the Langbords' coins?</p> <p>22 A. Yes.</p> <p>23 I recall coming to their office; I</p> <p>24 recall a little small talk; and then I recall Dan</p> <p>25 saying that - - I recall Dan saying that the</p>
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<p>1 both strikeouts and underlined, but sometime going</p> <p>2 to underline to make clear to someone this is what</p> <p>3 I'm adding.</p> <p>4 As I look at this section, I don't</p> <p>5 know whether there's something else that I changed.</p> <p>6 I don't know if there is or not.</p> <p>7 When I read, there's underlining.</p> <p>8 I'm inconsistent because I'm not particularly - -</p> <p>9 it requires a lot of manual crossing out and</p> <p>10 underlining.</p> <p>11 So, that's the only point that I'm</p> <p>12 making.</p> <p>13 As I read this, it reads as if there,</p> <p>14 maybe, in the first page I'm trying to - - it reads</p> <p>15 as if it may have said something else than what I</p> <p>16 added.</p> <p>17 Q. What you added is what is underlined;</p> <p>18 right?</p> <p>19 A. Again, I'm interpreting the document.</p> <p>20 I have no memory of it and I'm just interpreting</p> <p>21 the document.</p> <p>22 But I'm assuming, based on that</p> <p>23 interpretation, what is underlined is what I added.</p> <p>24 Q. Okay. Let's turn to the June '05</p> <p>25 meeting.</p>	<p>1 government has decided not to offer a financial</p> <p>2 settlement to resolve the issues related to the</p> <p>3 coins. And the most the government would offer is</p> <p>4 the Langbords an opportunity to get public</p> <p>5 recognition.</p> <p>6 And there was some sort of public</p> <p>7 disclosure about the coins.</p> <p>8 I recall expressing extreme</p> <p>9 disappointment and saying, in substance, "I'll</p> <p>10 speak to my clients. But, as you know, there'll,</p> <p>11 obviously, be litigation."</p> <p>12 And I believe that was the extent of</p> <p>13 the conversation.</p> <p>14 Q. Was there any discussion about the</p> <p>15 nature of the litigation that there would be?</p> <p>16 A. I don't recall at that meeting; no.</p> <p>17 Q. Did - - you're familiar with the</p> <p>18 Barnard case; right?</p> <p>19 A. I'm familiar with the Barnard case.</p> <p>20 Q. Generally familiar?</p> <p>21 Do you recall who the Plaintiff was</p> <p>22 in that case?</p> <p>23 MR. TIRSCHWELL: I'm going to object</p> <p>24 and instruct him not to answer.</p> <p>25 MR. SWEET: Eric, it's leading to a</p>

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<p>1 factual question. I'm just trying to lay a</p> <p>2 predicate.</p> <p>3 I'm not trying to get into any deep</p> <p>4 meaning.</p> <p>5 I'll show him the decision.</p> <p>6 I'll ask it a different way.</p> <p>7 MR. TIRSCHWELL: Maybe just get to</p> <p>8 the question and maybe he can answer it.</p> <p>9 MR. SWEET: I'll get it through a</p> <p>10 different way.</p> <p>11 BY MR. SWEET: (Continued)</p> <p>12 Q. Mr. Berke, the Barnard case was a</p> <p>13 replevin action brought by the United States. You</p> <p>14 may be familiar with the case and the fact it was</p> <p>15 brought by the United States.</p> <p>16 The status of the Double Eagle issued</p> <p>17 -- at issue in that case, at the time that the</p> <p>18 litigation was brought, do you know what -- where</p> <p>19 it was?</p> <p>20 MR. TIRSCHWELL: Does he know as a</p> <p>21 matter of fact?</p> <p>22 MR. SWEET: As a matter of fact.</p> <p>23 MR. TIRSCHWELL: Whether the Double</p> <p>24 Eagle was in the Barnard case when the case</p> <p>25 was brought?</p>	<p>1 THE WITNESS: I don't recall that</p> <p>2 fact being in the Sotheby's catalogue. I</p> <p>3 don't recall that -- that word.</p> <p>4 Q. Do you recall a fact -- if you think</p> <p>5 it's privileged, it's privileged -- but do you</p> <p>6 recall the fact that that's what happened?</p> <p>7 MR. TIRSCHWELL: I mean, to the</p> <p>8 extent that -- yeah, I don't see how he can</p> <p>9 answer that.</p> <p>10 But give us a chance to confer and</p> <p>11 see if we can figure it out.</p> <p>12 (Recess: 4:24 p.m.)</p> <p>13 (Resumed: 4:32 p.m.)</p> <p>14 MR. SWEET: If I'm correct, we just</p> <p>15 ended with your description of what happened</p> <p>16 at the June 2005 meeting.</p> <p>17 Right?</p> <p>18 Do we have questions after that?</p> <p>19 I don't recall the last question.</p> <p>20 MR. TIRSCHWELL: There was a question</p> <p>21 about Barnard.</p> <p>22 MR. SWEET: That's correct.</p> <p>23 MR. TIRSCHWELL: Not that I'm</p> <p>24 interested in reminding you.</p> <p>25 MR. SWEET: And you took a break to</p>
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<p>1 MR. SWEET: Yes.</p> <p>2 MR. TIRSCHWELL: I mean, if you know</p> <p>3 that?</p> <p>4 THE WITNESS: Can I talk to you?</p> <p>5 MR. TIRSCHWELL: Yes.</p> <p>6 I don't know how he can use that, but</p> <p>7 let's confer.</p> <p>8 MR. SWEET: I'll save some time.</p> <p>9 I'll save time. I'll ask it a different way.</p> <p>10 MR. TIRSCHWELL: Okay.</p> <p>11 BY MR. SWEET: (Continued)</p> <p>12 Q. Mr. Berke, the Sotheby's catalogue</p> <p>13 for the Fenton coin states that Mr. Barnard turned</p> <p>14 his -- the Double Eagle that he had in his</p> <p>15 possession, turned it into the registry of the</p> <p>16 Court, and following that, the United States filed</p> <p>17 a replevin action.</p> <p>18 Were you aware of that?</p> <p>19 MR. TIRSCHWELL: That is said in the</p> <p>20 Sotheby's catalogue?</p> <p>21 MR. SWEET: Yes.</p> <p>22 MR. TIRSCHWELL: You can answer</p> <p>23 whether you read that in the Sotheby's</p> <p>24 catalogue.</p> <p>25 Do you remember?</p>	<p>1 confer.</p> <p>2 MR. TIRSCHWELL: Yes.</p> <p>3 MR. SWEET: I lost track.</p> <p>4 MR. TIRSCHWELL: And I've conferred</p> <p>5 with Mr. Berke and it's clear to me that</p> <p>6 there is no way for him to discuss the</p> <p>7 Barnard case, his thought or knowledge about</p> <p>8 the Barnard case, without revealing his</p> <p>9 strategies, thoughts process and legal</p> <p>10 analysis.</p> <p>11 So, I've instructed him not to answer</p> <p>12 any questions about the Barnard case.</p> <p>13 You asked him something about seeing</p> <p>14 something in the catalogue and he answered</p> <p>15 that question.</p> <p>16 But with respect to the case itself,</p> <p>17 I've stated our objection.</p> <p>18 EXAMINATION (Continued)</p> <p>19 BY MR. SWEET:</p> <p>20 Q. Mr. Berke, did you have any</p> <p>21 discussions with the Mint about the mechanism, such</p> <p>22 as placing the Double Eagles in the custody of the</p> <p>23 court as opposed to turning them over to the</p> <p>24 government?</p> <p>25 A. Not that I recall.</p>

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<p>1 Q. Going back to the last document we 2 were just looking at, which I think is Berke? 3 Do you have it there? 4 It's Berke 6, I guess, the Q and A? 5 A. Yes. 6 Q. The second page, bottom left? 7 A. Yes. 8 Q. There's a footer, "KL." That's a 9 footer showing it is a document from Kramer Levin? 10 A. It is. 11 But I'm sure what I did is, I was 12 sent a Word document that I just saved in our 13 system to make changes and save it. 14 Q. Okay. 15 A. But I will tell you, I have no 16 recollection of any of these changes, so I can't 17 tell you what changes I did or didn't make or 18 whether there are words I took out or whether there 19 was things that were added. I would be guessing. 20 Q. Okay. 21 A. I just don't recall anything. 22 Q. I want to confirm that the footer 23 template - - if I'm correct - - that that shows it 24 was a document from the Kramer Levin computer 25 system; right?</p>	<p>1 As I look at it today, I can't say 2 what changes, alterations were made in that 3 process. That what I'm saying. 4 Q. Okay. But we can say that if this is 5 your text, which you don't dispute, your changes 6 were intended to minimize the controversy in 7 numismatic circles? 8 A. Yes. I agree that's what I wrote. 9 Q. Yes. 10 A. I just can't say anything beyond 11 that. 12 Q. Do you recall, at the meeting of the 13 25th, suggesting that the Mint reconsider its 14 position and consider auctioning off at least one 15 of the Double Eagles? 16 A. Are you talking about the June 17 meeting? 18 Q. Yes. 19 MR. TIRSCHWELL: June 2005? 20 MR. SWEET: Yes. 21 THE WITNESS: I don't recall that. 22 What I recall, very generally, is 23 expressing my frustration and, you know, 24 talking about that there were a variety of 25 words avoiding this litigation and we're</p>
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<p>1 A. Yes. 2 Q. Okay. 3 A. But, well, I want to be clear, 4 though. 5 A copy of this document was saved on 6 the system. But the document itself did not 7 originate on the Kramer Levin system. 8 Q. Okay. 9 A. Do you understand? 10 Q. Understood. 11 But from what you can tell here, from 12 this e-mail from you, with an attachment - - and 13 then I'm representing that this was the attachment 14 and it has a footer showing that it's from the 15 Kramer Levin system - - you don't have any doubt, 16 do you, that this was a document that you conveyed, 17 transmitted to Mr. Pickens and Mr. Weinman and Ms. 18 Smith? 19 A. No, what I'm saying I can't say, as I 20 look at this, what changes I may have made or 21 didn't make and what had been in the document that 22 was created somewhere else and that the document 23 itself was not created on the Kramer Levin system. 24 In other words, it was sent to me, saved and then 25 sent back.</p>	<p>1 going to go back, you know, where we were in 2 the Fenton case and recalling that, you know, 3 there are a lot of issues that would be 4 litigated. 5 I can't recall, as I sit here today, 6 the precise discussion. I don't believe I - 7 - well, I just recall - - recall saying that 8 there were a lot of ways to avoid what would 9 be a tremendous expenditure of resources in 10 another litigation that we've already had. 11 I don't recall that statement. 12 BY MR. SWEET: (Continued) 13 Q. Do you recall at some point 14 suggesting, at some point - - I'm not putting a 15 time on it - - suggesting to Mr. Shaver and/or Mr. 16 Weinman that the government should consider 17 auctioning one of the Double Eagles as a route 18 toward a settlement? 19 A. I recall discussing a lot of 20 different possibilities and I recall in that 21 analysis talking about how if you have, for 22 example, five of those coins which are now made 23 available, the value would be much less than if you 24 have a fewer number. 25 That's giving an example.</p>

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<p>1 So, I recall discussing a lot of</p> <p>2 combinations and possibilities of how to think</p> <p>3 about trying to settle the case short of</p> <p>4 litigation.</p> <p>5 I can't say that I specifically</p> <p>6 recall doing that analysis as to one coin. But I</p> <p>7 don't believe I ever said, and if you did that,</p> <p>8 that would be a deal. But certainly there had been</p> <p>9 some experience of one coin being out there and</p> <p>10 then you would extrapolate to say what that might</p> <p>11 mean if there were only going to be two coins out</p> <p>12 there.</p> <p>13 MR. SWEET: And I might have asked</p> <p>14 this and if I have, I'm sorry.</p> <p>15 BY MR. SWEET: (Continued)</p> <p>16 Q. In the June meeting, did you discuss</p> <p>17 the nature of any contemplated litigation, the</p> <p>18 nature of the claims?</p> <p>19 A. I don't recall us discussing the</p> <p>20 specifics of any claims.</p> <p>21 Q. Anything else from that meeting that</p> <p>22 you recall?</p> <p>23 A. Other than, as I mentioned, you know,</p> <p>24 pleasantries prior to the actual discussion, I</p> <p>25 think I described everything I recall.</p>	<p>1 learned was inaccurate?"</p> <p>2 You know, specific factual things</p> <p>3 that won't call on him to -- to think about</p> <p>4 and, therefore, reveal his thought process in</p> <p>5 terms of what -- how to characterize</p> <p>6 something.</p> <p>7 MR. SWEET: You know one of the</p> <p>8 problems I think we're having here -- and</p> <p>9 I've seen this in other cases where lawyers</p> <p>10 are witnesses -- is that you have a person</p> <p>11 who was involved in the activity by which the</p> <p>12 claim arises and that person also continues</p> <p>13 to represent the client in the case and is</p> <p>14 involved in the legal strategies and</p> <p>15 discussions and is, therefore, in an</p> <p>16 untenable position.</p> <p>17 That's why there is a rule, ethics</p> <p>18 rules, that precludes a lawyer who is a</p> <p>19 witness from also being the lawyer at the</p> <p>20 trial.</p> <p>21 And what I'm suggesting now is that</p> <p>22 you can't have it both ways. You can't have</p> <p>23 a claim arising from -- you can't have a</p> <p>24 claim arising from negotiations and</p> <p>25 activities and then have the same -- and</p>
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<p>1 Q. Was there anything that Mr. Berke or</p> <p>2 Mr. Shaver said at that meeting that you believe</p> <p>3 was misleading or --</p> <p>4 A. You mean Mr. Weinman?</p> <p>5 Q. Yes.</p> <p>6 A. You said Mr. Berke.</p> <p>7 Q. Mr. Weinman or Mr. Shaver, anything</p> <p>8 they said at the June 2005 meeting that you believe</p> <p>9 was misleading or in bad faith?</p> <p>10 MR. TIRSCHWELL: Objection to the</p> <p>11 form.</p> <p>12 THE WITNESS: I'm not comfortable</p> <p>13 characterizing it or drawing any legal</p> <p>14 conclusions.</p> <p>15 I have to talk to my counsel to see</p> <p>16 if I can say something consistent with his</p> <p>17 instructions to me.</p> <p>18 MR. TIRSCHWELL: If you want to ask a</p> <p>19 specific question, the problem with asking,</p> <p>20 you know, counsel on the case questions like</p> <p>21 that is it's just impossible to separate.</p> <p>22 So, that's why I'm asking you to</p> <p>23 focus on -- focus your questions specific-</p> <p>24 ally on something that was said, "Is there</p> <p>25 something that was said, that you later</p>	<p>1 then for that lawyer to object to providing</p> <p>2 discovery on the ground that it reveals</p> <p>3 mental impressions, legal strategies on the</p> <p>4 very same case.</p> <p>5 It denies us a fundamental right to</p> <p>6 get discovery, which is relevant and</p> <p>7 probative to understanding the claims and to</p> <p>8 defend the claims.</p> <p>9 So, I make this statement now because</p> <p>10 I see this going and I -- I see this</p> <p>11 becoming an issue that is likely to get</p> <p>12 addressed through motion practice and I'm</p> <p>13 trying to find a way to avoid that.</p> <p>14 But I'm, from my prospective, I'm</p> <p>15 finding my frustration is very great from</p> <p>16 what I'm sure you consider in many cases</p> <p>17 appropriate orders to your client,</p> <p>18 instructions not to testify about things that</p> <p>19 I consider fundamentally important to the</p> <p>20 very nature of the claims.</p> <p>21 And that may just be a problem that</p> <p>22 we have to ask the judge to look at the issue</p> <p>23 and see the objections and see the kind of</p> <p>24 stuff that's not being testified to and ask</p> <p>25 Mr. Berke to come back.</p>

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<p>1 And I'm spreading it out there</p> <p>2 because if you can find a way around this,</p> <p>3 great. I'm trying to be cooperative and</p> <p>4 resolve the problem. I'm not threatening</p> <p>5 anything. But I'm telling you that I'm</p> <p>6 finding a good faith deposition to be</p> <p>7 severely hampered and frustrated by your</p> <p>8 objections and instructions not to answer.</p> <p>9 MR. TIRSCHWELL: Well, I mean, I</p> <p>10 don't think the ethics rules say what you</p> <p>11 describe.</p> <p>12 I think we've been very clear here.</p> <p>13 I think he's answered every question as to</p> <p>14 what happened and, quite frankly, I think</p> <p>15 that's all that matters, what happened; what</p> <p>16 did he say; what did the gentlemen from the</p> <p>17 government say; what was the correspondence?</p> <p>18 What their subjective beliefs about</p> <p>19 all that are or were is not relevant.</p> <p>20 And I think you blocked lots of my</p> <p>21 questions to Mr. Shaver and Mr. Weinman about</p> <p>22 their thought process and their subjective</p> <p>23 beliefs, even though they are not acting as,</p> <p>24 you know, litigation counsel at this point -</p> <p>25 - at least I don't think so - I think</p>	<p>1 happened is not relevant.</p> <p>2 MR. SWEET: Would you agree that</p> <p>3 where there's a dispute over the meeting - -</p> <p>4 where there is an agreement, where there was</p> <p>5 an agreement, whether a document accurately</p> <p>6 memorializes an agreement, the person - - the</p> <p>7 - - the subjective understanding of the</p> <p>8 person who wrote the letter, the frame of</p> <p>9 mind, the information known to the person, to</p> <p>10 the parties, that that's relevant?</p> <p>11 MR. TIRSCHWELL: I mean, that's a</p> <p>12 very broad statement.</p> <p>13 I don't agree with that in the</p> <p>14 blanket way, at all.</p> <p>15 MR. SWEET: Okay.</p> <p>16 That's - - that's - - so I</p> <p>17 understand, if we do have to tee this up,</p> <p>18 that's where I'm coming from right now.</p> <p>19 I'm finding that the deposition is</p> <p>20 being hampered because reasonable inquiries</p> <p>21 into areas of knowledge and intent and</p> <p>22 meaning are being frustrated by the</p> <p>23 objections.</p> <p>24 So, let's just continue and we'll do</p> <p>25 what we can.</p>
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<p>1 you're acting as litigation counsel.</p> <p>2 So, I don't see the problem. I don't</p> <p>3 think we're blocking any question about what</p> <p>4 happened and what happened is what's</p> <p>5 relevant.</p> <p>6 And you're free to ask him any</p> <p>7 question you want and you have asked him lots</p> <p>8 of questions and he's answered every one</p> <p>9 about what happened.</p> <p>10 But when you start asking him to</p> <p>11 characterize things or you use words that</p> <p>12 have legal implications, then you cross the</p> <p>13 line into something that is just not</p> <p>14 appropriate for a lawyer to be answering.</p> <p>15 And a lawyer is not required to</p> <p>16 answer.</p> <p>17 So, I don't see the problem and I</p> <p>18 think there's a clear line. I think, as I</p> <p>19 said, he will answer any question. That's</p> <p>20 why I suggested on the last question, if you</p> <p>21 wanted to ask him what statements did they</p> <p>22 make; did anything later occur that was</p> <p>23 inconsistent with that statement, you can ask</p> <p>24 him that. That's what happened.</p> <p>25 But how he thought about what</p>	<p>1 My last question was about whether</p> <p>2 anything that occurred at the June 25th</p> <p>3 meeting you believe was misleading, any</p> <p>4 comments or statements by Mr. Shaver or Mr.</p> <p>5 Weinman.</p> <p>6 And I think your answer was that you</p> <p>7 wouldn't answer that; right?</p> <p>8 MR. TIRSCHWELL: Well, we objected to</p> <p>9 the form of the question.</p> <p>10 MR. SWEET: Did you also instruct him</p> <p>11 not to answer?</p> <p>12 MR. TIRSCHWELL: I believe we did,</p> <p>13 unless you can make it more precise or you</p> <p>14 stick to not his characterization or</p> <p>15 impression, but what happened and what was</p> <p>16 said and what was later said and was there</p> <p>17 anything that was later said that was</p> <p>18 inconsistent, then we'll answer.</p> <p>19 MR. SWEET: Okay.</p> <p>20 BY MR. SWEET: (Continued)</p> <p>21 Q. Did Mr. Shaver or Mr. Weinman make</p> <p>22 any false statements to you at the lunch meeting at</p> <p>23 the Italian restaurant?</p> <p>24 A. I'm not sure I understand your</p> <p>25 question.</p>

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<p>1 Q. As a factual matter, did Mr. Shaver 2 or Mr. Weinman make any false statements to you, 3 statements which you later determined, or at the 4 time or later determined, to be false statements, 5 at that meeting?</p> <p>6 A. The reason why I don't understand 7 your question, are you asking me did they tell me 8 something as a matter of fact that I later came to 9 believe they knew to be false when they told me?</p> <p>10 Q. Yes. That's what I'm asking.</p> <p>11 A. Well, I can't answer whether they 12 knew something to be false that they told me at 13 that meeting. I don't know.</p> <p>14 Q. Did you have a belief that they did?</p> <p>15 A. I'm having trouble understanding your 16 question as it's framed; okay?</p> <p>17 Because the question is: Do I have a 18 belief that when they told me certain things at 19 that meeting they believed them false at the time 20 they said them to me?</p> <p>21 Q. That's exactly what my question is.</p> <p>22 A. I have no basis, as I sit here today, 23 that at that meeting they said things to me that 24 they believed to be false.</p> <p>25 Q. Same question with respect to the</p>	<p>1 talk to Mr. Berke about what he wrote as 2 opposed to some other person who may have 3 wrote the letter.</p> <p>4 MR. TIRSCHWELL: Well, I think you 5 can ask him whether he signed it, whether he 6 reviewed it.</p> <p>7 But whether it was a collaborative 8 effort or not sure is relevant.</p> <p>9 BY MR. SWEET: (Continued)</p> <p>10 Q. That's your signature on the third 11 page; right?</p> <p>12 A. Yes.</p> <p>13 Q. There are a couple of places here in 14 the letter - - and I'll point them out if you want 15 - - the first place in the second paragraph, where 16 it says, "discussed resolving any issue relating to 17 the coins."</p> <p>18 That's a term that comes up over and 19 over again in various correspondence in the 20 complaint.</p> <p>21 What issues does this refer to?</p> <p>22 A. This refers - - refers to the issues 23 that would be litigated, absence a settlement of 24 the case.</p> <p>25 Q. Including who owns them?</p>
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<p>1 September 15th meeting in Brooklyn.</p> <p>2 A. I cannot say that I know whether they 3 said things to me at that meeting that they 4 believed to be false at the time they said it.</p> <p>5 Q. Same thing on September 22nd.</p> <p>6 A. Again, I cannot say that I know that 7 when they made statements on September 22nd they 8 knew they were false when they made them.</p> <p>9 Q. I'm going to show you a series of 10 letters, Mr. Berke.</p> <p>11 The first is Berke 7. 12 (Letter, 3 pages, so marked Berke 13 Exhibit 7 for identification by counsel.) 14 (Handed to the witness.)</p> <p>15 Q. Could you identify this document?</p> <p>16 A. It's a July 25th, 2005, letter from 17 me to Dan Shaver.</p> <p>18 Q. Okay. You wrote it; right?</p> <p>19 A. (No response.)</p> <p>20 Q. I mean, not just signed, but this is 21 your authorship?</p> <p>22 MR. TIRSCHWELL: What's the question?</p> <p>23 MR. SWEET: Whether it's his 24 authorship?</p> <p>25 I just want to confirm that I can</p>	<p>1 A. Well, I believe the issues is best 2 described as to whether they are subjected to 3 forfeiture.</p> <p>4 Q. Okay. That's how you describe it.</p> <p>5 Did you ever discuss - - I mean, the 6 letter says, "discuss resolving any issues relating 7 to the coins."</p> <p>8 But you testified earlier that you 9 never specifically discussed forfeiture with - - 10 expressly with Mr. Shaver or Mr. Weinman.</p> <p>11 Did you discuss any other issues, 12 such as ownership?</p> <p>13 A. I don't believe that was my 14 testimony.</p> <p>15 Q. Well, I think it was.</p> <p>16 A. No.</p> <p>17 Q. But we have a transcript for that 18 reason.</p> <p>19 A. I don't believe that was my 20 testimony.</p> <p>21 Q. At any point in your discussions with 22 Mr. Weinman and Mr. Shaver did you identify the 23 issues relating to the coins, expressly identify 24 what they are?</p> <p>25 A. (No response.)</p>

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